



DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY
2000 EVERGREEN STREET, SUITE 250
SACRAMENTO, CA 95815-3832
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CALIFORNIA BOARD OF ACCOUNTANCY (CBA) PUBLIC MEETING NOTICE FOR THE CBA MEETING

DATE: Thursday, February 24, 2011 **TIME:** 1:00 p.m. to 4:00 p.m.

PLACE: Hilton Los Angeles Airport
5711 West Century Blvd.
Los Angeles, CA 90045
Telephone: (310) 410-4000
Facsimile: (310) 410-6177

TELECONFERENCE LOCATIONS:

Law Offices of Lenora Taylor
109 Jackson St., Ste. 240
Hayward, CA 94544
Telephone: (510) 581-1963

LaManna & LaManna CPAs
16870 West Bernardo Dr., Ste. 400
San Diego, CA 92127
Telephone: (858) 716-9202

Enclosed for your information is a copy of the agenda for the CBA meeting on February 24, 2011. For further information regarding this meeting, please contact:

Veronica Daniel, Board Relations Analyst
(916) 561-1716, or vdaniel@cba.ca.gov
California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815

An electronic copy of this notice can be found at <http://www.dca.ca.gov/cba/calendar.shtml>

The next CBA meeting is scheduled for March 24-25, 2011 in San Diego, CA.

The meeting is accessible to individuals who are physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Veronica Daniel at (916) 561-1718, or email vdaniel@cba.ca.gov, or send a written request to the CBA Office at 2000 Evergreen Street, Ste. 250, Sacramento, CA 95815. Providing your request is at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.



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DEPARTMENT OF CONSUMER AFFAIRS (DCA)
CALIFORNIA BOARD OF ACCOUNTANCY (CBA)

CBA MEETING
AGENDA

Thursday, February 24, 2011
1:00 p.m. – 4:00 p.m.

Meeting Location:

Hilton Los Angeles Airport
5711 West Century Blvd.
Los Angeles, CA 90045
Telephone: (310) 410-4000
Fax: (310) 410-6177

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- I. Roll Call and Call to Order (**Sally Anderson, President**).
- II. Background Presentation on the Professional Fiduciaries Bureau (PFB)
(**Gil DeLuna, Acting Bureau Chief/Vincent Johnston, CBA Staff**).
- III. Discussion of Previously Proposed Consolidation of the CBA and the PFB
(**Vincent Johnston, CBA Staff**).
- IV. Overview of PFB Laws and Regulations (California Business and Professions Code Division 3, Chapter 6, Sections 6500-6592 and California Code of Regulations Title 16, Division 41, Sections 4402-4580)
(**Matthew Stanley, CBA Staff**).

- V. Discussion Regarding the Possible Consolidation of the CBA and the PFB
(Matthew Stanley, CBA Staff).
- VI. Discussion of Possible Legislative Language Regarding the PFB
(Matthew Stanley, CBA Staff).
- VII. Direction to Witnesses on Statements to be Made at Sunset Review Hearing
(Matthew Stanley, CBA Staff).
- VIII. Other Business.

National Association of State Boards of Accountancy's Request for Vice Chair
Recommendations for 2011-12 **(Veronica Daniel, CBA Staff).**
- IX. Public Comments for Items not on the Agenda.
- X. Agenda Items for Future CBA Meetings.
- XI. Adjournment.

Please note: Action may be taken on any item on the agenda. All times are approximate. The time and order of agenda items are subject to change at the discretion of the CBA President and may be taken out of order. In accordance with the Bagley-Keene Open Meetings Act, all meetings of the CBA are open to the public. While the CBA intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations on resources. Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the CBA prior to the CBA taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the CBA, but the CBA President may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the CBA to discuss items not on the agenda; however, the CBA can neither discuss nor take official action on these items at the time of the same meeting (Government Code Sections 11125, 11125.7(a)).

Memorandum

CBA Agenda Item II.
February 24, 2011

To : CBA Members

Date : February 16, 2011

Telephone : (916) 561-1344

Facsimile : (916) 263-3674

E-mail : vjohnston@cba.ca.gov

From : Vincent Johnston
Associate Analyst

Subject : Background Presentation on the Professional Fiduciaries Bureau (PFB)

Professional fiduciaries provide critical services to seniors, disabled persons, and children. They manage matters including, but not limited to: daily care, housing and medical needs, and also offer financial management services ranging from basic bill paying services to investment management.

The Professional Fiduciaries Bureau (PFB) was created by Senate Bill (SB) 1550 (Figueroa) in 2006. SB 1550 mandated that all professional fiduciaries become licensed by July 1, 2008, however that date was later extended to January 1, 2009. Prior to January 2009, all private professional conservators, private professional guardians, and private professional trustees were required to file a specified annual statement, under penalty of perjury, with the clerk of the court, or to register with the Department of Justice's Statewide Registry of Private Conservators and Guardians. It appears that the registry was not used as a licensing/enforcement tool, rather as a clearing house for the court system to identify and assign a private conservator or guardian as needed.

The PFB mandate is to license and regulate non-family member private fiduciaries, including conservators, guardians, trustees, and agents under durable powers of attorney as defined by the Professional Fiduciaries Act. Requirements for licensure as a California Licensed Professional Fiduciary (PF) include completing thirty hours of approved education courses, passing an examination, and earning fifteen hours of continuing education credit each year for renewal. The PFB regulates approximately 500 individuals, with approximately 120 new license applicants each year. PFB activities are overseen by an Advisory Committee, consisting of seven members, including four public members and three professional members. There are currently two vacancies on the Advisory Committee.

PFB administrative operations began in July 2007, with a special fund loan from the Bureau of Automotive Repair's Vehicle Inspection and Retirement Fund in the amount of \$1,055,000. Per budget act control section 14.00, this loan had to be paid back within 18 months, with interest. A second loan of \$215,000 from the same account was issued on July 31, 2009. The original loan was repaid in fiscal

Background Presentation on the Professional Fiduciaries Bureau

Page 2

year 2008-09, and it is anticipated the subsequent loan will be repaid at the end of fiscal year 2010-11. The PFB was originally allocated four staff positions, however due to budgetary concerns, that number was downsized to 1.7.

Included as part of this agenda item are a number of documents intended to provide CBA members with substantial information regarding the background and present status of the PFB. A summary of the various enclosures is outlined below.

- Attachment 1:** PFB “Quick Facts” detailing composition of the Advisory Committee, program background, current issues and other relevant information.
- Attachment 2:** PFB Sunset Review Report provided to the Legislature in 2010.
- Attachment 3:** PFB Strategic Plan.
- Attachment 4:** PFB budget and staff allocation.
- Attachment 5:** “Frequently Asked Questions” related to the PFB, and becoming a professional fiduciary.

It should be noted that the position in Attachment 2 stating, “In an effort to support the suggestions made in this document, the Bureau would like to request that the next sunset review be established three (3) years from now,” is the current official position of the Department of Consumer Affairs, and it is not authorized to deviate from that position at this time.

CBA staff and the PFB Bureau Chief will be at the meeting to answer any questions.

QUICK FACTS

Attachment 1

PROFESSIONAL FIDUCIARIES BUREAU

1625 N. Market Blvd Suite S-210, Sacramento, CA 95834
(916) 574-7340 / <http://www.fiduciary.ca.gov>

Bureau Chief (Acting)	Gil DeLuna	(916) 574-7870
Legislative Analyst (LPR)	Jeff Toney	(916) 574-7803
Board Leg Contact	Gil DeLuna	(916) 574-7870
Legal Counsel	Gary Duke	(916) 574-8220
Budget Analyst	Sean Cogan	(916) 574-7218

LAWS AND REGULATIONS

Business and Professions Codes §§ 6500 – 6592

Title 16, Division 41, California Code of Regulations §§ 4400 – 4580

FY 2010-11 Budget Information: \$293,000 1.7 Personnel Years

Fee Schedule	Current Fee	Statutory Limit
Application	\$400	Not set in statute
Examination	\$250	Not set in statute
Original License	\$600	Not set in statute
Renewal	\$700	Not set in statute

LICENSEE POPULATION

Total Population: 470

ADVISORY COMMITTEE MEMBERS

Total Members: 7

Public Members: 4

Professional Members: 3

SUNSET REVIEW

Last review: In Progress

Inoperative/Repeal dates: January 1, 2012

PROGRAM BACKGROUND

The Professional Fiduciaries Bureau (Bureau) was created by Senate Bill 1550 (Figueroa, Chapter 491, Statutes of 2006.) The Bureau's mandate is to license and regulate non-family member private fiduciaries, including conservators, guardians, trustees and agents under durable powers of attorney as defined by the Professional Fiduciaries Act. Professional fiduciaries provide critical services to seniors, disabled persons, and children. They manage matters for clients including, but not limited to, daily care, housing and medical needs, and also offer financial management services ranging from basic bill paying to estate and investment management. Requirements for licensure include completing thirty hours of approved education courses, passing an examination and earning fifteen hours of continuing education credit each year for renewal. The Advisory Committee consists of seven members, including four public members (one must be a probate court investigator and one must be an elderly advocate) and three professional members. The Governor appoints three professional members and one elderly advocate, and the Senate Rules Committee and the Speaker of the Assembly each appoint one public member. The Bureau's budget for FY 2010-11 is \$293,000 with 1.7 positions.

The Bureau began its operation on July 1, 2007, using a special fund loan from the Bureau of Automotive Repair's Vehicle Inspection and Retirement Fund of \$1,055,000. Per budget act control section 14.00, this loan had to be repaid back within 18 months plus interest. A second loan of \$215,000 from the same account was issued on July 31, 2009. Initially, the Bureau was budgeted to have 4 PYs, but that was scaled back when the revenues generated did not meet the anticipated amount. The Bureau began licensing in January 1, 2009.

MISSION STATEMENT

To protect the consumer through licensing and monitoring, and to ensure competent and ethical standards of practice for professional fiduciaries.

COMMITTEES

A Legislative Committee, Education Committee, and Licensing Committee are currently being established.

LICENSING REQUIREMENTS (§ 6530)

Degree/Professional Schooling	YES
Examination	YES
Continuing Education/Competency	YES
Fingerprinting Requirements	YES

LICENSEE STATISTICS

Licensee Category	No. of Active Licensees
Professional Fiduciaries	470

RECIPROCITY

The Board does not offer reciprocity with other states.

ADVISORY COMMITTEE MEMBERS

Name	Appointment Expires	Appointing Authority	Requires Senate Confirmation
Lisa Berg	January 1, 2011	Governor/Professional	NO
Cynthia Morrow	January 1, 2011	Senate Rules Committee/Public	NO
Sharon O'Neill	January 1, 2011	Governor/Public (probate court investigator)	NO
Clark Parker	January 1, 2011	Speaker of the Assembly/Public	NO
Daniel Stubbs (Chair)	January 1, 2011	Governor/Professional	NO
Vacant	N/A	Governor/Public (elderly advocate)	NO
Vacant	N/A	Governor/Professional	NO

CURRENT ISSUES

1. The Bureau is facing budgetary challenges due to the limited number of licensees. The Bureau's licensing fees are among the highest in the Department, and a fee increase is highly unlikely.
2. The Bureau is currently undergoing Sunset Review. The Bureau's Sunset Review Report has been submitted to the Senate Business, Professions & Economic Development Committee and hearings will be conducted in February or March, 2010.
3. The lack of resources has virtually eliminated licensee enforcement. The majority of staff time is spent on licensing and administration.
4. The Bureau currently has an Acting Chief.
5. Cite and Fine regulations have been drafted and are awaiting approval by the Director.

LEGISLATIVE HISTORY

AB 2271 (Silva, Chapter 94, Statutes of 2010) allowed a probate court to appoint a temporary trustee who can exercise trustee powers during the course of an appeal of a probate order or judgment.

AB 2493 (Fuller, Chapter 97, Statutes of 2010) required a conservator on the establishment of a conservatorship by the court and annually thereafter, to ensure that a clear photograph of the conservatee is taken and preserved for the purpose of identifying the conservatee if he or she becomes missing.

SB 202 (Harman, Chapter 621, Statutes of 2010) made minor changes to the Probate Code relating to trusts, including clarifying when trustees must give "trustee notification" to beneficiaries, the settlor's heirs, and the Attorney General (AG). This bill also increases the size of small trusts that the trustee has the discretionary power to terminate from \$20,000 to \$40,000.

SB 1038 (Harman, Chapter 48, Statutes of 2010) clarified statute in order to hold attorneys-in-fact liable for damages to an estate if the attorney-in-fact acted in bad faith.

SB 308 (Harman, Chapter 348, Statutes of 2009) made clarifying and technical changes to the statutory definition of "professional fiduciary."

SB 819 (Yee, Chapter 308, Statutes of 2009) added the Professional Fiduciaries Bureau to the list of entities within the Department of Consumer Affairs that are required to post specified information about their licensees.

SB 821 (Business, Professions & Economic Development, Chapter 307, Statutes of 2009) made a violation of the professional fiduciary licensure requirement punishable as an infraction.

AB 1340 (Jones, Chapter 293, Statutes of 2008) made technical clarifying changes regarding accounting documents submitted to courts by guardians and conservators, hearing notices for appointing temporary guardians or conservators, and court procedures for retaining the appointment of professional fiduciaries as guardians or conservators. Also made changes to guardian and conservator petition requirements as proposed by SB 800 (Corbett, 2007) which was held in the Assembly Appropriations Committee.

SB 1215 (Harman, 2008) would have made changes to the statutory definition of "Professional Fiduciary" in the Professional Fiduciaries Act. *This bill died in the Assembly Judiciary Committee.*

AB 1727 (Judiciary Committee, Chapter 553, Statutes of 2007) required various special filings for professional conservators; permitted the disclosure of confidential health information in conservatorship investigations; established procedures for a public guardian to investigate the necessity of a conservatorship; and made various changes to streamline court procedures.

SB 183 (Corbett, Chapter 48, Statutes of 2007) repealed the requirement for a petition for the transfer of the right to commence or maintain an action for relief for abuse of an elderly or dependent adult who has died, and permits the automatic passing of this right to the decedent's personal representative, intestate heir, successor in interest, or an interested party; and permitted the court to grant specified persons the right to commence or maintain an action for elder abuse if the representative of the decedent was the abusive party or has a conflict of interest, or if multiple claims to the right to commence or maintain an action are made.

SB 1047 (Business, Professions & Economic Development, Chapter 354, Statutes of 2007) extended the date by which a person must be licensed by the Professional Fiduciaries Bureau (Bureau); requires a professional fiduciary to have a baccalaureate degree, an associate degree plus three years of experience, or five years of experience prior to July 1, 2012; and requires the Bureau to maintain information regarding whether the licensee has ever been removed as a fiduciary by a court.

MAIN INDUSTRY ASSOCIATION

Professional Fiduciary Association of California

One Capitol Mall, Suite 320

Sacramento, CA 95814

866-886-7322 or 916-669-5330

<http://www.pfac-pro.org>

PART 1.

PROFESSIONAL FIDUCIARIES BUREAU BACKGROUND INFORMATION AND OVERVIEW OF THE CURRENT REGULATORY PROGRAM

BACKGROUND AND DESCRIPTION OF THE BUREAU AND PROFESSION

Short Explanation of the History and Function of the Bureau

The Professional Fiduciaries Bureau (Bureau), under the Department of Consumer Affairs (DCA), was created by SB 1550 (Figueroa), Chapter 491, Statutes of 2006 (Professional Fiduciaries Act (Act)) to regulate non-family member professional fiduciaries, including conservators, guardians, trustees, and agents under durable power of attorney as defined by the Act.

Professional fiduciaries provide critical services to seniors, disabled persons, and children. They manage matters for clients including, but not limited to, daily care, housing and medical needs, and also offer financial management services ranging from basic bill paying to estate and investment management. Requirements for licensure include completing thirty (30) hours of approved education courses, passing an examination and earning fifteen (15) hours of continuing education credit each year for renewal. Licensees must comply with reporting requirements and must abide by the Professional Fiduciaries Code of Ethics so that client matters are handled responsibly and without conflict.

The Bureau is charged with carrying out the following functions:

- Educating consumers about their rights and quality of service.
- Promoting legal and ethical standards of professional conduct.
- Investigating the background of applicants.
- Administering licensing examinations.
- Licensing Professional Fiduciaries.
- Investigating complaints from consumers.
- Taking disciplinary action and issuing citations against licensees whenever appropriate.

The Bureau began its operation on July 1, 2007 using a special fund loan from the Bureau of Automotive Repair's Vehicle Inspection and Retirement Fund of \$1,055,000.* Initially, the Bureau was budgeted to have 4 Personnel Years (PYs), but that was scaled back when the revenues generated did not meet the anticipated amount.

*Per budget act control section 14.00, this loan had to be repaid back within 18 months plus interest. A second loan of \$215,000 from the same account was issued on July 31, 2009.

Current Composition of the Bureau Advisory Committee

The Advisory Committee consists of seven members of whom five are appointed by the Governor, one by the Senate Rules Committee and one by the Speaker of the Assembly. Three members must be California Licensed Professional Fiduciaries (CLPF), two must be public members, one must be a representative of the probate courts and one must be a member of a non-profit advocate for the elderly. One of the CLPF positions has been vacant since April 16, 2009, and the non-profit vacancy has never been filled.

Table A below illustrates the current composition of the Advisory Committee.

Table A – Bureau Advisory Committee

Member	Appointment Type	Appointed By	Appointment Date	Appointment Expires
Sharon O'Neill (Vice Chair)	Probate Court Investigator	Governor	11/2008	1/1/2011
Lisa Berg	CLPF	Governor	10/2008	1/1/2011
Daniel Stubbs (Chair)	CLPF	Governor	11/2008	1/1/2011
Cynthia Morrow	Public Member	Senate Rules Committee	5/2008	1/1/2011
Clark Parker	Public Member	Speaker of the Assembly	10/2009	1/1/2011
Vacant	CLPF	Governor		
Vacant	Nonprofit organization advocating on behalf of the elderly	Governor		

Advisory Committee and Their Functions

The function of the Advisory Committee is to increase the level of communication between the Bureau, the public, and fiduciaries. The seven-member group is balanced to represent public, judicial and industry interests. The Advisory Committee has met three times since the Bureau's creation (November 2008, January 2010 and July 2010) to provide input to the Bureau Chief on program issues.

Who the Bureau Licenses and Regulates

The Bureau's mandate is to license and regulate certain non-family member private fiduciaries, as defined in the Professional Fiduciaries Act, including:

- ***Conservators / Guardians***

A person who acts as a conservator or guardian for two or more persons at the same time who are not related to the professional fiduciary or to each other by blood, adoption, marriage, or registered domestic partnership.

- ***Trustees / Agent Under a Durable Powers of Attorney***

A person who acts as a trustee, agent under a durable power of attorney for health care, or agent under a durable power of attorney for finances, for more than three people or more than three families, or a combination of people and families that totals more than three, at the same time, who are not related to the professional fiduciary by blood, adoption, marriage, or registered domestic partnership. "Trustee" includes an individual who is acting as a trustee or an individual acting on behalf of an entity to perform the functions of a trustee, for a trust that includes at least one individual beneficiary, and, they are acting on behalf of more than three trustors whom are not related to them.

The following individuals are not required to obtain a license, as defined in the Act:

- ***A Trust Company or Employee***

A trust company, as defined in Section 83 of the Probate code, or one of its employees acting within the course and scope of employment.

- ***An FDIC-Insured Institution or Employee***

An FDIC-insured institution, or its holding companies, subsidiaries, or affiliates, or an employee of one of these entities acting within the course and scope of employment. An affiliate means any entity that shares an ownership interest with, or that is under the common control of, the FDIC-insured institution.

- ***A Public Officer or Public Agency***

Any public officer or public agency, including the public guardian, public conservator, or other agency of the State of California or of a county of California, when that public officer or public agency is acting in the course and scope of official duties, or any regional center for persons with developmental disabilities.

- ***A Broker-Dealer and Investment Advisor***

Any person whose sole activity as a professional fiduciary is as a broker-dealer, broker-dealer agent, investment adviser, or investment adviser representative registered and regulated under the Corporate Securities Law of 1968, the Investment Advisers Act of 1940, or the Securities Exchange Act of 1934, or involves serving as a trustee to a company regulated by the Securities and Exchange Commission under the Investment Company Act of 1940.

- ***Attorney***

Any person licensed as an attorney under the California State Bar Act.

- ***Certified Public Accountant (CPA)***

Any person licensed as a CPA pursuant to Chapter 1 (commencing within Section 5000 of the Business and Professions Code) of Division 3 acting within the scope of practice of the CPA license.

- ***Enrolled Agent***

Any person enrolled as an agent to practice before the Internal Revenue Service acting within the scope of practice pursuant to Part 10 of Title 31 of the Code of Federal Regulations. However, the Bureau determined early on that most enrolled

agents providing fiduciary services would not qualify for this exemption. Therefore, they must be licensed by the Bureau in order to perform fiduciary services.

Changes to the Bureau since the last Sunset Review

This is the Bureau's first sunset review. The most significant accomplishments and internal changes since the inception of the Bureau are the following:

- ***Adoption of Regulations***

The Bureau filed emergency regulations dealing with the Code of Ethics and pre-licensure and continuing education requirements on November 2, 2007. Additionally, it issued emergency regulations on November 26, 2007 which allowed the Bureau to begin a licensing program. This second set of emergency regulations covered application requirements, grounds for license denial and annual reporting requirements. Both of these regulations packages were subsequently adopted as final regulations upon the filing of certificate of compliance on May 19, 2008 and June 16, 2008 respectively.

- ***Dissolution of the "Quad Bureaus"***

The Bureau separated from the "Quad Bureaus" in October 2009. The "Quad Bureau" consisted of Telephone Medical Advice Service Bureau (TMAS), Hearing Aid Dispenser Bureau (HADB), Bureau of Naturopathic Medicine, and the Professional Fiduciaries Bureau. These bureaus were joined for the purposes of administrative and operational efficiencies. When Assembly Bill X420 (Statutes of 2009) was passed, the Bureau of Naturopathic Medicine became a committee under the Osteopathic Medical Board. Additionally, Assembly Bill 1535 (Jones), Chapter 309, Statutes of 2009 merged the Hearing Aid Dispensers Bureau with the Speech-Pathology and Audiology Board. This legislation effectively dissolved the "Quad Bureaus" and the Professional Fiduciaries Bureau and TMAS became stand alone entities.

- ***Bureau Management***

Since its inception, the Bureau has been overseen by one appointed Bureau Chief and three subsequent Acting Chiefs. As of April, 2010, Gil DeLuna has been appointed as the Acting Chief of the Bureau. DeLuna has 23 years of program experience with the Department of Consumer Affairs, which include several years of complaint resolution and investigation experience, as well as work in consumer education and outreach.

Any Major Studies Conducted by the Bureau

No major studies have been conducted.

Licensing Data

There are approximately 450 licensed professional fiduciaries for FY 2009/10. The following provides licensing data for the past three years:

LICENSING DATA FOR PROFESSIONAL FIDUCIARIES	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Total Licensed California Out-of-State	Total: N/A	Total: 86 86 0	Total: 346 346 0	Total: 450 449 1
Applications Received	Total: N/A	Total: 248	Total: 206	Total: 126
Applications Denied	Total: N/A	Total: 0	Total: 0	Total: 0
Licenses Issued	Total: N/A	Total: 86	Total: 260	Total: 116
Renewals Issued	Total: N/A	Total: N/A	Total: 2	Total: 229
Applications Expired	Total: N/A	Total: 0	Total: 5	Total: 25
Applications Pending	Total: N/A	Total: 162	Total: 100	Total: 85
Statement of Issues Filed	Total: N/A	Total: 0	Total: 3	Total: 3
Statement of Issues Withdrawn	Total: N/A	Total: 0	Total: 0	Total: 2
Licenses Denied	Total: N/A	Total: 0	Total: 3	Total: 1

The Bureau only licenses professional fiduciaries so the following table is not applicable.

OTHER LICENSURE CATEGORIES (If Applicable)	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Total Licensees (By Type) [Profession] [Profession]	Total: N/A	Total: N/A	Total: N/A	Total: N/A
Licenses Issued (By Type) [Profession] [Profession]	Total: N/A	Total: N/A	Total: N/A	Total: N/A
Renewals Issued (By Type) [Profession] [Profession]	Total: N/A	Total: N/A	Total: N/A	Total: N/A
*(Notes)				

BUDGET AND STAFF

Current Fee Schedule and Range

Discuss which fees are main source of revenues, when renewal is required, date of last fee(s) adjustment, and if any plans to increase fees and for what reasons. List all fees.

The Bureau's main source of revenue is fees collected from initial applications, licenses, and license renewals, which occur annually. Although there is an examination fee, this fee is not paid to the Bureau but instead to the company that administers the exam. Through the collection of fees, the Bureau is able to administer the activities related to licensing, enforcement, and consumer education.

Unlike many other boards, the Bureau's fees are not set in statute. Fees are determined during the Bureau's regulatory process at a level necessary to meet the program's operational costs.

Fees have not been adjusted since the Bureau began operations in July 2007. Based on the Bureau's level of expenditures and projected reserve funds, there are no current plans to adjust/augment the scheduled fees at this time.

Fee Schedule	Current Fee	Statutory Limit
Application Fee	\$400	Not set in statute
Exam Fee	\$250	Not set in statute
Original License Fee	\$600	Not set in statute
Original License Fee- Prorated	Variable*	Not set in statute
Renewal Fee	\$700	Not set in statute

*The Bureau has structured the renewal timeframe to coincide with the month of the licensee's birthday. Therefore, the original license fee may be prorated to combine the first full year of licensure with the number of months until the licensee's next birthday, making the fee higher than \$600.

Revenue and Expenditure History (rounded to thousands)

Provide brief overview of revenues and expenditures.

Comparison of Revenues and Expenditures

REVENUES	ACTUAL				PROJECTED	
	FY 2006/07	¹ FY 2007/08	FY 2008/09	² FY 2009/10	FY 2010/11	FY 2011/12
Licensing Fees	N/A	\$183,000	\$324,000	\$285,000	\$396,000	\$396,000
Fines & Penalties	N/A	\$0	\$0	\$0	\$0	\$0
Other	N/A	\$0	\$0	\$0	\$0	\$0
Interest	N/A	\$27,000	\$17,000	\$1,000	\$2,000	\$1,000
TOTALS		\$210,000	\$341,000	\$286,000	\$398,000	\$397,000

EXPENDITURES	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12
Personnel Services	N/A	172,000	136,000	\$55,000	\$128,000	\$128,000
Operating Expenses	N/A	228,000	105,000	\$178,000	\$165,000	\$180,000
(-) Reimbursements	N/A	\$0	\$0	\$0	\$0	\$0
(-) Distributed Costs	N/A	\$0	\$0	\$0	\$0	\$0
TOTALS	N/A	\$400,000	\$241,000	\$233,000	\$293,000	\$308,000

¹Bureau effective FY 07-08. Chapter 491, Statutes of 2006

²Estimate only as final numbers have not yet been released by Calstars. Final- Fiscal Month 13 not closed.

Revenues

The Professional Fiduciary Fund (PFF) experienced an initial shortfall in revenue due to the need for both start up funding and a delay of 6 months in the projected timeline for the program to begin licensure as a result of SB 1047 (Chapter 354, Statutes of 2007). Additionally, the initial population estimate of 1,300 professional fiduciaries was higher than actual participation. To date, the Bureau has 450 licensees. Licensing revenue decreased in FY 2009-2010 in comparison to FY 2008-2009 because 1) there was not a significant influx of initial applicants applying for licensure (as experienced in the first and second year) and 2) revenues only reflect a portion of renewed licenses given that licensees renew by the end of their birthday month.

Given the anticipated stability of revenues generated from licensing fees after FY 2010-11, it is anticipated that this component of total revenues will remain steady at least for the foreseeable future.

Expenditures

When the Bureau was first established, four positions were budgeted for and they included one Bureau Chief, two Associate Governmental Program Analysts (AGPA) and one Office Technician (OT). The revenue from licensing fees was not sufficient to provide the funding for these four positions and as a result the budget was adjusted to eliminate the AGPA positions and only provide for a Staff Services Analyst (SSA) and a .7 PYs for a Bureau Chief. The Bureau's overall expenditures did decrease in FY 2008-09 by 40% from the previous year mainly due to budgetary constraints set forth by the requirement of the initial loan repayment in FY 2008-09.

Note: See Fund Condition below regarding the loan repayment.

Expenditures by Program Component

Discuss the amounts and percentages of expenditures made by program components. (See Table Below)

During the last three years, the Bureau expended an average of 52.6% on Licensing, 38.7% on Administration activities and 8.7% on enforcement. The administrative cost includes operating expenses and statewide and departmental pro-rata.

EXPENDITURES BY PROGRAM COMPONENT	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10	Average % Spent by Program
Enforcement	N/A	\$ 0	\$ 27,726	\$ 55,719	8.7%
Examination	N/A	\$ 0	\$ 0	\$ 0	0%
Licensing	N/A	\$ 199,000	\$ 161,000	\$ 143,000	52.6%
Administrative	N/A	\$ 201,000	\$ 80,000	\$ 90,000	38.7%
Diversion (if applicable)	N/A	N/A	N/A	N/A	N/A
TOTALS		\$ 400,000	\$ 268,726	\$ 288,719	100%

Fund Condition (rounded to thousands)

Discuss reserve level, spending trends, and if a mandated statutory reserve level exists. Also whether deficit may occur and whether fee increase or reductions is appropriate.

Comparison of Revenues, Expenditures, and Reserves

ANALYSIS OF FUND CONDITION	FY 2007/08	FY 2008/09	FY 2009/10	FY 2010-2011 (Projected)	FY 2011-12 (Projected)	FY 2012-13 (Projected)
Total Reserves, July 1	\$0	\$864,000	\$78,000	\$145,000	\$35,000	\$124,000
Total Revenues	\$210,000	\$341,000	\$278,000	\$398,000	\$397,000	\$398,000
Total Transfers In	\$1,055,000	\$215,000				
Total Transfers Out		(\$1,055,000)		(\$215,000)		
Total Resources	\$1,265,000	\$375,000	\$356,000	\$328,000	\$432,000	\$522,000
Total Expenditures	\$401,000	\$297,000	\$211,000	\$293,000	\$308,000	\$323,000
Unreimbursed Loans to General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Accrued Interest Loans to General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Reserve, June 30	\$864,000	\$78,000	\$145,000	\$35,000	\$124,000	\$199,000
MONTHS IN RESERVE	34.0	4.4	5.9	1.4	4.6	7.3

Based on the Bureau's level of expenditures and projected reserve funds, there are no current plans to seek to adjust/augment the scheduled fees at this time. The Bureau received two loans to help fund operations.

Control Section 14.00 loans/special fund loans:

- An initial loan of \$1,055,000 from the Bureau of Automotive Repair's Vehicle Inspection Retirement Fund (VIRF) (0421) to the PFF (3108) in FY 2007-08
- The loan repayment plus interest from the PFF (3108) to the VIRF (0421) repaid in FY 2008-09.
- A second loan of \$215,000 from the VIRF (0421) to the PFF (3108) in FY 2008-09; this loan plus interest will be repaid in FY 2010-11.

Currently, the Bureau is projected to have 1.4 months reserve for 2010-11. Three (3) to six (6) months of reserve funds is deemed to be fiscally responsible for large programs. Small programs should maintain a reserve closer to six (6) months operating expenses. However, once the second loan is repaid, fund reserves are anticipated to increase to appropriate levels. This will also free up resources that will be directed towards enforcement.

LICENSURE REQUIREMENTS

Education, Experience and Examination Requirements

Discuss education, experience and examination requirements for all licensure categories which the Bureau regulates.

Basic Eligibility for Licensure:

- ***Be at least 21 years of age.***
- ***Be a United States citizen or legally admitted to the United States.***
- ***Completion of Application***
Requires name, business address, address of public record, date of birth, social security number, and contains an inquiry of U.S. citizenship status.
- ***Other Licenses and Certificates***
Requires history and information of other licenses and/or certificates held by applicant along with a statement of explanation.
- ***Bankruptcy***
Requires bankruptcy information, if applicable, from the applicant.
- ***Pre-licensing Education***
A major component of licensing is the requirement to obtain 30 hours of pre-licensing education credit in approved education courses. An approved education course must be relevant to fiduciary responsibilities of the person or estate management for conservators, guardians, trustees, or agents under durable power of attorney, or of the court system or ethics for fiduciaries. Bureau-approved courses must be taken from an accredited educational institution, or be approved or offered by an approved education provider.
- ***Education and Experience Qualifications***
Requires specific college information if applicable, pursuant to Business and Professions Code Section 6533(g). Requires specific experience information if applicable, including contact information for at least three references, and requires applicant provide consent for the Bureau to contact the references for experience verification.
- ***Convictions and Fiduciary Actions Convictions***
Requires Live Scan, electronic fingerprinting records, information regarding applicant's criminal conviction history.
- ***Affidavit***
Requires applicant to sign the licensing application certifying under penalty of perjury to the truth and accuracy of information provided and represented on the form, giving consent for the Bureau to conduct a credit check for the application review process and requiring the applicant to agree to adhere to the Professional Fiduciaries Code of Ethics. Only application forms with original signatures will be accepted.

Once the applicant has satisfied the above requirements, they are then eligible to take the California Professional Fiduciary Examination which is comprised of two components, a nation-wide portion and a California only portion.

What does the Bureau do to verify information provided by the applicant regarding education and experience? What process is used to check prior criminal history information, prior disciplinary actions, or other unlawful acts of the applicant?

Education and Experience:

New Applicants

The courses taken to fulfill an applicant's pre-licensing education requirements (30 hours) are listed on the application by the applicant. If the course is approved by or given by one of the providers listed on the Bureau's website, the Bureau accepts the application signed under penalty of perjury. The Bureau does not actively verify this information but can request it.

If an applicant applies under the experience requirement, they are required to list three references. The Bureau reviews the number of years and specific duties performed. If experience does not meet requirements, the applicant is given the opportunity to provide additional information. Again, the Bureau does not actively verify this information but can should the need arise.

Licensee Renewals

The number of continuing education (CE) courses taken to fulfill renewal requirements (15 hours annually) are entered on the annual renewal application and returned with the renewal payment.

In the case of either a new licensee or renewal, both must sign the form under penalty of perjury. Bureau regulation sections 4450(b) and 4452(b) state that the applicant/licensee shall maintain documentation of completion of the courses for a period of at least 3 years from date of issuance/renewal of license. Sections 4450(c) and 4452(c) state the applicant/licensee shall provide any information requested by the bureau within 10 business days of the request, to determine compliance with the pre-licensing/continuing education requirements.

An applicant must demonstrate compliance with the continuing education requirements and sign under penalty of perjury. While the Bureau does not have the resources to audit licensee applications at this time, they can request the documentation from the individual should the need arise.

Criminal History Check

Each applicant is required to be fingerprinted and the results are transmitted to the Bureau electronically from the Department of Justice. If there is a criminal history, the applicant is asked to provide an explanation and copies of all records relating to the arrest / conviction / completion of any court ordered requirements.

Disciplinary Actions

Actions that can be taken against licensees include administrative citations and fines, license suspension or probation, removal, resignation, and settlement. If reported on the application or any annual statement once licensed, the applicant/licensee is required to provide an explanation and any court findings or documents relating to the action. There is no national database to check if disciplinary action has occurred in another state but the Bureau does receive information about criminal conviction information through Live Scan.

Examinations

Discuss passage rates for all examinations, whether there is legitimate justification for all exams, whether exams have had an occupational analysis performed and been validated and when, and the date of the next scheduled occupational analysis for each exam.

Licensees must pass the California Professional Fiduciary Examination which is comprised of two components, a nation-wide portion and a California-only portion. Applicants are required by state law to take the examination and an occupational analysis survey was conducted in 2007 prior to developing the California exam to determine its validity by the Center for Guardianship Certification, a national vendor for examination development. The next occupational analysis will be due in 2012. Additionally, item analyses were done on the performance of the California exams in July 2008 and February 2009 by American Association of Retired Persons (AARP) consultant, Dr. Robert Wise. The exams were revised based on information from the item analyses shortly after each analysis.

Comparison of exam passage rates for all candidates for both a national exam (if applicable) and/or a California state exam(s) if provided.

California Professional Fiduciary Examination				
YEARS	NATION-WIDE		CALIFORNIA ONLY	
	TOTAL CANDIDATES	PASSAGE RATE	TOTAL CANDIDATES	PASSAGE RATE
FY 2006/07	N/A	N/A	N/A	N/A
FY 2007/08	132	94%	117	78%
FY 2008/09	239	82%	238	71%
FY 2009/10	103	92%	98	69%

The Bureau does not separately track the number of days between the time of application to the time of examination or the time between examination to the issuance of a license. However, the Bureau is able to provide the total average number of days between an application for and the subsequent issuance of a professional fiduciary license.

AVERAGE DAYS TO RECEIVE LICENSE	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Application to Examination	N/A	Unknown	Unknown	Unknown
Examination to Issuance	N/A	Unknown	Unknown	Unknown
Total Average Days	N/A	Unknown	118	187

Continuing Education/Competency Requirements

How does the Bureau verify continuing education or other competency requirements?

The Bureau relies on applicants to self-certify their education and competency requirements by signing a document under penalty of perjury.

New Applicants

The courses taken to fulfill an applicant's pre-licensing education requirements (30 hours) are listed on the application by the applicant. If the courses are approved by or given by one of the certified providers listed on the bureau's website, they are accepted. If an applicant applies under the experience requirement, they are also required to list three references. The Bureau then reviews the number of years and specific duties performed and if the experience does not meet the Bureau's requirements, the applicant is then given the opportunity to provide additional information.

Renewal Applicants

The number of CE courses taken to fulfill renewal requirements (15 hours annually) are entered on the annual renewal application and returned with the renewal payment. The Bureau also relies on self certification of the licensees' CE courses.

Comity/Reciprocity With Other States

Currently, the Bureau does not have any Comity/Reciprocity laws.

ENFORCEMENT ACTIVITY

ENFORCEMENT DATA	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Inquiries	Total: N/A	Total: N/A	Total: N/A	Total: N/A
Complaints Received (Source)	Total: N/A	Total: 18	Total: 60	Total: 47
Public		7	52	42
Licensee/Professional Groups		--	2	3
Governmental Agencies		--	--	1
Other		11	6	1
Complaints Filed (By Type)	Total: N/A	Total: 18	Total: 60	Total: 47
Competence/Negligence		6	34	25
Unprofessional Conduct		--	--	1
Fraud		--	9	1
Health & Safety		--	--	--
Unlicensed Activity		--	4	7
Personal Conduct		--	2	2
NON-JURISDICTIONAL		1	6	9
OTHER		11	5	2
Complaints Closed	Total: N/A	Total: 2	Total: 4	Total: 28
Complaints Pending	Total: N/A	Total: 16	Total: 44	Total: 45
Investigations Commenced	Total: N/A	Total: N/A	Total: N/A	Total: N/A
Compliance Actions	Total: N/A	Total: N/A	Total: N/A	Total: N/A
ISOs & TROs Issued				
Citations and Fines				
Public Letter of Reprimand				
Cease & Desist/Warning				
Referred for Diversion				
Compel Examination				
Referred for Criminal Action	Total: N/A	Total: N/A	Total: N/A	Total: N/A
Referred to AG's Office	Total: N/A	Total: N/A	Total: 3	Total: 1
Accusations Filed/Statement of Issues Filed			3	0
Accusations/Statement of Issues Withdrawn			0	2
Accusations Dismissed			0	0
Stipulated Settlements	Total: N/A	Total: N/A	Total: N/A	Total: N/A
Disciplinary Actions	Total: N/A	Total: N/A	Total: N/A	Total: N/A
Revocation				
Voluntary Surrender				
Suspension Only				
Probation with Suspension				
Probation				
Probationary License Issued				
Probation Violations	Total: N/A	Total: N/A	Total: N/A	Total: N/A
Suspension or Probation				
Revocation or Surrender				
* NOTES				

Enforcement Program Overview

The Bureau continues to work to build an effective enforcement program. This effort has been significantly restricted by the smaller than expected licensee base and the repayment of substantial startup loans. The Bureau has been limited to one Staff Services Analyst that primarily focuses on licensing and other administrative duties, one borrowed staff position to review and manage consumer complaints and a part-time Acting Bureau Chief who is working on developing a cite and fine program, strategic plan and overseeing operations.

NUMBER AND PERCENTAGE OF COMPLAINTS DISMISSED, REFERRED FOR INVESTIGATION, TO ACCUSATION AND FOR DISCIPLINARY ACTION				
	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
COMPLAINTS RECEIVED	N/A	18	60	47
Complaints Closed	N/A	2	28	50
Referred for Investigation	N/A	0	0	0
Accusation Filed	N/A	0	0	0
Disciplinary Action	N/A	0	0	0

Case Aging Data

Not applicable for the Bureau at this time.

AVERAGE DAYS TO PROCESS COMPLAINTS, INVESTIGATE AND PROSECUTE CASES				
	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Complaint Processing	N/A	208	465	234
Investigations	N/A	N/A	N/A	N/A
Pre-Accusation*	N/A	N/A	N/A	N/A
Post-Accusation**	N/A	N/A	N/A	N/A
TOTAL AVERAGE DAYS***	N/A	208	465	234
*From completed investigation to formal charges being filed.				
**From formal charges filed to conclusion of disciplinary case.				
***From date complaint received to date of final disposition of disciplinary case.				

Discuss time frames for closing of investigations and AG cases over past four years, and average percentage of cases taking over 2 to 4+ years, and any decreases or increases in the percentage of cases being closed each year. Discuss any changes from last review.

The Bureau only has one pending licensee appeal case which has been referred to the Office of the Attorney General. The costs of this case are found in the “Enforcement Expenditures and Cost Recovery” section.

INVESTIGATIONS CLOSED WITHIN:	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10	AVERAGE % CASES CLOSED
90 Days	N/A	0	0	0	0
180 Days	N/A	0	0	0	0
1 Year	N/A	0	0	0	0
2 Years	N/A	0	0	0	0
3 Years	N/A	0	0	0	0
Over 3 Years	N/A	0	0	0	0
Total Cases Closed					
AG CASES CLOSED WITHIN:	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10	AVERAGE % CASES CLOSED
1 Year	N/A	0	0	2	100
2 Years	N/A	0	0	0	0
3 Years	N/A	0	0	0	0
4 Years	N/A	0	0	0	0
Over 4 Years	N/A	0	0	0	0
Total Cases Closed	N/A	0	0	0	
Disciplinary Cases Pending	N/A	0	3	2	

Cite and Fine Program

The Bureau is in the process of developing a regulations package to implement a cite and fine program.

CITATIONS AND FINES	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Total Citations	N/A	N/A	N/A	N/A
Total Citations With Fines	N/A	N/A	N/A	N/A
Amount Assessed	N/A	N/A	N/A	N/A
Reduced, Withdrawn, Dismissed	N/A	N/A	N/A	N/A
Amount Collected	N/A	N/A	N/A	N/A

Diversion Program

The Diversion program is not applicable to the Bureau.

Results of Complainant Satisfaction Survey

No data collected at this time. The Bureau started to survey complainants on July 1, 2010.

ENFORCEMENT EXPENDITURES AND COST RECOVERY

Average Costs for Disciplinary Cases

Discuss the average costs incurred by the Board for the investigation and prosecution of cases, and which type of cases average more than others. Explain if the Board is having any difficulty in budgeting for Prosecution and Hearing costs, and whether cases may have been delayed because of cost overruns.

AVERAGE COST PER CASE INVESTIGATED	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Cost of Investigation & Experts	N/A	0	0	0
Number of Cases Closed	N/A	0	0	0
Average Cost Per Case	N/A	0	0	0
AVERAGE COST PER CASE REFERRED TO AG	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Cost of Prosecution & Hearings	N/A	0	\$27,726	\$55,719
Number of Cases Referred	N/A	0	3	1
Average Cost Per Case	N/A	0	\$27,726	\$55,719
AVERAGE COST PER DISCIPLINARY CASE	N/A	0	\$9,242	\$55,719

Cost Recovery Efforts

The Bureau has not ordered any enforcement cost recovery.

COST RECOVERY DATA	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Total Enforcement Expenditures	N/A	N/A	N/A	N/A
# Potential Cases for Recovery*	N/A	N/A	N/A	N/A
# Cases Recovery Ordered	N/A	N/A	N/A	N/A
Amount of Cost Recovery Ordered	N/A	N/A	N/A	N/A
Amount Collected	N/A	N/A	N/A	N/A

*The "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on a violation, or violations, of the License Practice Act.

RESTITUTION PROVIDED TO CONSUMERS

Discuss the Bureau's efforts in obtaining restitution for the individual complainant, and whether they have any formal restitution program and the types of restitution that the Bureau's attempts to collect, i.e., monetary, services, etc. Discuss any changes from last review.

The Bureau has not obtained restitution for any complainants.

RESTITUTION DATA	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Amount Ordered	N/A	N/A	N/A	N/A
Amount Collected	N/A	N/A	N/A	N/A

COMPLAINT DISCLOSURE POLICY

Briefly describe the Bureau's complaint disclosure policy. At what point in the disciplinary process is information made available to the public concerning the licensee and what type of information is made available?

The Bureau currently adheres to the Department of Consumer Affairs' recommended minimum standards for consumer complaint disclosure which states a commitment to ensuring consumers are provided information about complaints in a timely, fair, and equitable manner.

The standards set forth in the document are intended to set a recommended minimum standard for disclosing information concerning complaints filed by consumers. They are not intended to replace the overall disclosure practices of the various agencies throughout the Department. Rather, they are offered as a model for how to handle the disclosure of information that meets certain criteria. The Bureau is responsible for reviewing these standards to determine how they can be incorporated into existing disclosure practices.

Under DCA's policy, the Bureau discloses formal accusation or interim suspension orders when they are filed by the Bureau.

See attachment regarding the Department's Complaint Disclosure policy.

Does the Bureau have problems obtaining particular types of information?

TYPE OF INFORMATION PROVIDED	YES	NO
Complaint Filed		X
Citation		X
Fine		X
Letter of Reprimand		X
Pending Investigation		X
Investigation Completed		X
Arbitration Decision		N/A
Referred to AG: Pre-Accusation		X
Referred to AG: Post-Accusation		X
Settlement Decision		X
Disciplinary Action Taken		X
Civil Judgment		N/A
Malpractice Decision		N/A
Criminal Violation: Felony Misdemeanor		X

CONSUMER OUTREACH, EDUCATION AND USE OF THE INTERNET

Outreach methods. The Bureau maintains a website, www.fiduciary.ca.gov, that provides consumer protection information, including a complaint form and instructions on how to file a complaint, contact information for the Bureau, and licensure application information. DCA staff attends outreach events, many of which target seniors, to disseminate information to consumers about the program. The Bureau also provides consumer brochures entitled “*Are You a Professional Fiduciary Who Needs Licensing*” and “*Do You or Does a Loved One Need a Professional Fiduciary.*” The Bureau’s website was made available on July 18, 2007. From July 18, 2007, through June 30, 2010, the website has received 364,740 hits.

From July 2008 to present, staff from the DCA Outreach Unit has attended 16 outreach events where information about the Bureau was distributed, either through presentations or distribution of the Bureau’s brochure. These events are shown in the table below. In addition to the 16 events, DCA Outreach Unit staff plan to attend a workshop for seniors in November 2010, hosted by the Elder Financial Protection Network of San Francisco.

Outreach Events Involving the Bureau

Date of Event	Name of Event	Location
2008	California State Fair	Sacramento
2008	California Congress of Seniors	Long Beach
November 14, 2008	Elder Financial Protection Network (EFPN)	Santa Clara
2009	California Congress of Seniors	Sacramento
Feb 20, 2009	Elder Financial Protection Network (EFPN), Communities Against Senior Exploitation	Pleasant Hill
March 26, 2009	Call to Action	San Francisco
April 18, 2009	Consumer Protection Week South Bay	San Diego
June 11, 2009	Elder Financial Protection Network (EFPN)	San Francisco
July 10, 2009	Women's Financial Literacy, Business and Tax Seminar	Long Beach
August 27-Sept 1, 2009	California State Fair	Sacramento
Oct 6, 2009	AARP Workshop	Sacramento
October 10, 2009	Financial Literacy Fair Hosted by the State Controllers Office	Consumnes River College, Sacramento
December 8, 2009	Senator Leland Yee Presentation with the Department of Consumer Affairs and the Elder Financial Protection	San Francisco
March 3, 2010	Financial Literacy Event, State Controllers Office	Sacramento
April 20, 2010	Financial Literacy Fair Hosted by the State Controllers Office	CA State Capitol
June 24, 2010	Elder Financial Protection Network (EFPN)	San Jose
Nov 8, 2010	Elder Financial Protection Network (EFPN)	Contra Costa

Online Information

The Bureau's website offers the following information.

- Information to consumers about the activities of the Bureau.
- Where and how to file complaints.
- Information about licensees and requirements for licensure.
- License information and applications, including applications for initial and renewal licenses.

Currently, the Bureau offers on-line complaint filing to consumers. It does not offer on-line licensing, but believes this is both feasible and appropriate for the future. Very little streamlining of administrative functions would be required for on-line licensing. Once the on-line information was received by the Bureau, it would still require the same level of review it currently receives from Bureau staff.

PART 2.

Professional Fiduciaries Bureau

Bureau's Response to Critical Issues Identified at Prior Sunset Review

As this will be the first sunset review for the Professional Fiduciaries Bureau (Bureau), the Bureau is unable to respond to any issues from a prior sunset review. However, this section will be utilized to discuss potential improvements to the some of the topics outlined in Part 1 of the report.

Goals and Opportunities

When SB 1550 (Figueroa), Chapter 491, Statutes of 2006 (Professional Fiduciaries Act), was signed by Governor, he stated:

"I believe that it is important to protect California's vulnerable population from the financial abuse of unscrupulous professional fiduciaries that seek to do intentional harm."

The number one priority of the Bureau is to protect California consumers from fraud and abuse. Despite the current challenges facing the Bureau, the Department believes there are significant opportunities for growth and operational improvements to transform the Bureau into a program that improves consumer protection.

Goal #1: Increase the Number of Licensees

Increasing the Bureau's licensee population is essential. An increase in the number of licensees would provide more revenue for the Bureau that could help add additional staff, streamline office operations and enhance the enforcement program.

Although the initial projections of the Department had placed the approximate number of licensees at 1,300, the actual number has not reached that goal. That is not to say that progress towards this number cannot be made. In January of 2010, the Bureau had approximately 400 licensees. Within six months, that number has increased to over 450 with another 85 applications still pending approval.

According to the Professional Fiduciaries Association of California, "California's population is growing at an increasing rate, and the growth in the number of people 65 years of age or older will grow from 3.6 million people early in the decade, to 6.2 million people in the year 2020, an increase of 72 percent." The establishment of the Bureau is partially based on the premise that the number of people in California who are going to need a licensed fiduciary is

going to increase significantly in the coming decade. This increase could also result in more people wanting to become professional fiduciaries, thereby expanding the licensee base.

Goal #2: Enhance Enforcement Program

The Bureau is in the process of establishing a cite and fine program for those that are either practicing illegally or are found to have violated the Act.

Goal #3: Miscellaneous Opportunities

Opportunity #1: Next Sunset Review

In an effort to support the suggestions made in this document, the Bureau would like to request that the next sunset review be established three (3) years from now. This should provide sufficient time to demonstrate the continued increase in the number of licensees, the sustainability of the Bureau's budget and the value of the consumer protection that is provided.

Opportunity #2: Create a Strategic Plan

The Bureau is currently in the process of developing a strategic plan to address all Bureau operations, policies, and procedures. As of July 21, 2010, all members of the Bureau's Advisory Committee have completed a "Strength, Weaknesses, Opportunities and Threats" (S.W.O.T.) document to assist the Bureau in identifying each of those components. Bureau staff indicates they will finish this plan by September 1, 2010.

Opportunity #3: Federal Financial Reform

The federal government has been working on a comprehensive financial reform bill. This bill was signed into law on July 21, 2010. Part of this legislation seeks to expand the fiduciary responsibilities of broker-dealers and investment advisors – two categories currently exempt from licensure under the Bureau. Should the federal government decide to strengthen fiduciary standards, this may have significant impact on the Bureau. The Securities and Exchange Commission (SEC) is tasked with conducting a study to evaluate the effectiveness of the existing legal and regulatory standards of conduct for broker-dealers and investment advisors. Potentially, the new financial reforms could lead to more state oversight of fiduciaries and could lead to additional licensees under the Bureau.

Professional Fiduciaries Bureau

Committee Members

Daniel Stubbs, Chair

Sharon O'Neill, Vice Chair

Lisa Berg

Cynthia Morrow

Clark Parker



*Developed July 26, 2010 in conjunction with the DCA Strategic Planning
& Development unit*

Professional Fiduciaries Bureau

MISSION:

To protect the consumer through licensing and monitoring, and to ensure competent and ethical standards of practice for professional fiduciaries.

VISION:

To maintain and enhance the physical, emotional, and financial well being of consumers by promoting the highest professional fiduciary standards.

VALUES:

- **Integrity and Ethics** – We are honest, fair, and respectful in our treatment of everyone.
- **Accountability** – We are accountable to consumers and licensees. We operate transparently and encourage public participation in our decision-making whenever possible.
- **Effectiveness** – We make informed decisions in order to achieve positive, measurable results.
- **Customer Service** – We identify the best ways to deliver high-quality services with the most efficient use of our resources.

Goal 1: Licensure

- Increase the number of licensees by reaching out to other professions with relatable experience (i.e. social workers, gerontology, etc.).
- Partner with other government entities to increase licensure.
- Research the feasibility of creating an entry level license type for trainees, and develop the program if viable.



Goal 2: Enforcement

- Establish the Bureau's Cite and Fine program.
- Actively seek out unlicensed activity in partnership with the Department's Unlicensed Activities Unit.
- Leverage enforcement activity with Division of Investigation.
- Attend underground economy task force meetings and partner with Economic Employment Enforcement Coalition (EEEC).
- Post formal disciplinary accusations against licensed professionals on the bureau's website.
(Formal accusations are drafted by the Office of the Attorney General and issued by the Bureau only after significant wrong doing has been established through investigation.)
- Participate in the Department's Consumer Satisfaction survey on closed complaints.

Goal 3: Communication & Education

- Educate consumers and provide license information to professionals (online FAQ's for licensing information and Professional Fiduciaries Bureau forms).
- Seek out media opportunities.
- Develop Professional Fiduciaries Bureau publications in multiple foreign languages.
- Work with the Department's Publications Design unit to develop new publications.
- Partner with CIC and Outreach to increase the dissemination of PFB messages and publications.
- Develop PSA's and forums for the Senior Legislature.
- Partner with State Bar's Trust and Estate section to increase outreach.



Goal 3 (cont.): Communication & Education

- Attend local PFAC and California Association Superior Court Investigators meetings and their Annual conference for training purposes.
- Establish Outreach and communication to judges through the Administrative Office of the Courts (AOC).
- Gather and disseminate examples of industry best practices.
- Gather and disseminate victims' accounts of consumer fraud and abuse.
- Clarify the license renewal process.

Goal 4: Regulation and Legislation



- Seek Legislation to require licensure for all types of Durable Power of Attorney and Estate Administration not currently covered under present statutes.
- Develop Cite and Fine regulations.
- Develop advertising regulations requiring the inclusion of a licensee's professional fiduciary license number.
- Seek ways to streamline the license process through legislation.

Established/Vacant Positions Database

Search results

The source of this data is the State Controller's Office records effective
12/31/10 .

[Download the Data](#)

		<u>Class</u>		<u>FTE</u>			<u>%</u>	
CBID	Agency	Facility	Code	Title	Est'd	Filled	Vacant	Vacant
R01	CONSUMER AFFAIRS	PROFESSIONAL FIDUCIARIES BURE	5157	STAFF SER AN (GEN)	1.00	1.00	0.00	0.00%
E98	CONSUMER AFFAIRS	PROFESSIONAL FIDUCIARIES BURE	9605	CHIEF	0.70	0.00	0.70	100.00%



PROFESSIONAL FIDUCIARIES BUREAU Frequently Asked Questions & Answers



GENERAL INFORMATION

Q. Who is the Professional Fiduciaries Bureau?

A. The Professional Fiduciaries Bureau is a new state agency created by the Legislature in 2006 to license and regulate private fiduciaries, including specified conservators, guardians, trustees, and agents under durable power of attorney for healthcare and finances.

Q. Who needs a Professional Fiduciary?

A. A person who needs help managing their personal finances or healthcare matters may hire a Professional Fiduciary to assist.

Q. When is licensing required for Professional Fiduciaries?

A. All mandated Professional Fiduciaries must be licensed by January 1, 2009, but between July 1, 2008 and December 31, 2008, a mandated Professional Fiduciary must be licensed to receive a new court appointment.

Q. When will the Professional Fiduciaries Bureau begin licensing Professional Fiduciaries?

A. The Professional Fiduciaries Bureau will issue the first licenses on July 1, 2008 to pre-approved candidates.

Q. Is there a separate license category for each type of fiduciary covered under the Professional Fiduciaries Act?

A. No. There is only one license category for all mandated Professional Fiduciaries.

Q. Once I obtain a license as a California Professional Fiduciary will I still be required to file with the Statewide Registry of Conservators, Guardians, and Trustees within the California Department of Justice?

A. No. The California Department of Justice's Registry will sunset on June 30, 2008.

***ARE YOU A CALIFORNIA PROFESSIONAL FIDUCIARY?**

Q. If I am a fiduciary practicing in California do I need to be licensed?

A. It depends. You must be licensed as a California Professional Fiduciary if you act as a private conservator, guardian, trustee, or agent under durable power of attorney for healthcare or finances as defined in the Act.

Q. If I am a private conservator or private guardian do I need to be licensed as a California Professional Fiduciary?

A. It depends. You must be licensed if you are acting as a private conservator or private guardian for two or more persons at the same time who are not related to you or to each other.

Q. If I am a trustee or agent under durable power of attorney do I need to be licensed as a California Professional Fiduciary?

A. It depends. You must be licensed if you are acting as a trustee or agent under durable power of attorney for health care or for finances for more than three people or more than three families at the same time who are not related to you.

Q. If I am a public guardian or a public conservator do I need to be licensed?

A. No. You are not required to be licensed if you are a public officer or acting for a public agency of the State of California or for a county of California and you are acting as a conservator or guardian within the course and scope of that position.

Q. Are certain fiduciaries exempt from licensing under the Act?

A. Yes. As defined by the Act, attorneys, certified public accountants, employees of FDIC-insured institutions, public officers or employees of public agencies, broker dealers or investment advisors, enrolled agents for the IRS, and employees of trust companies or other companies regulated by the SEC, acting within the course and scope of employment are not required to be licensed by the Bureau.

Q. If I am a conservator for my elderly parents do I need to obtain a license as a California Professional Fiduciary?

A. No. The Act only applies to non-family member fiduciaries.

Q. If I am a conservator for my best friend's mother do I need to obtain a license as a California Professional Fiduciary?

A. No. To qualify under the Act you must be a conservator or guardian for two or more persons at the same time who are not related to you or to each other.

Q. If I am a conservator for my best friend's elderly parents do I need to obtain a license as a California Professional Fiduciary?

A. No. The two conservatees are related to each other.

Q. If I am a conservator for my best friend's elderly mother and for my teacher's elderly father do I need to obtain a license as a California Professional Fiduciary?

A. Yes. The two conservatees are not related to each other.

Q. If I am a trustee for one trustor do I need to obtain a license as a California Professional Fiduciary?

A. No. Under the Act only a person who is a trustee for more than three trustors for individuals or families must be licensed.

Q. If I am a trustee for more than three trustors who are related to each other do I need to obtain a license?

A. No. If the trustors are related to each other that only counts as one.

Q. If I am a trustee for one trustor of a family trust that includes more than three individual beneficiaries do I need to obtain a license?

A. No. The number of beneficiaries is irrelevant.

Q. If I am a trustee for a charitable trust do I need to obtain a license?

A. It depends. Only trustors for trusts that include at least one individual beneficiary are counted.

Q. If I work for a charitable trust do I need to obtain a license?

A. It depends. If you are acting on behalf of a charitable trust and are performing the functions of the trustee you would qualify for licensing if you manage trusts for more than three trustors who are not related to you.

Q. If I serve as trustee and conservator for my elderly parents do I need to obtain a license?

A. No. They are family.

***(See Business & Professions Code Sections 6501 and 6530 and Section 4406(e) of Article 1 of Division 41 of Title 16 of the California Code of Regulations)**

LICENSING & EXAMINATION

Q. How do I become licensed as a California Professional Fiduciary?

A. To become licensed as a California Professional Fiduciary you must receive approval from the Bureau after submitting an application package and passing the exam.

Q. When can I take the California Professional Fiduciary Licensing Examination?

A. After submitting your application package you must be deemed eligible by the Bureau to take the exam.

Q. How long do I have to take and pass the exam?

A. Once approved to take the exam, you will be eligible to take and pass the exam for a period of 12 months.

Q. Once deemed eligible, how do I register to take the exam?

A. The Center for Guardianship Certification (CGC) (formerly the National Guardianship Foundation) is the examination provider. You may register for the exam on the CGC website at www.guardianshipcert.org or by phone at (717) 238-4689.

Q. What if I do not pass the exam?

A. You will have a total of 4 more opportunities to take and pass the exam not to exceed one attempt every 30 days within your 12-month eligibility period.

Q. If I only act as a conservator under the Act is there an exam that is specific to conservators only?

A. No. There is only one type of exam that must be passed by all mandated Professional Fiduciaries.

Q. If I was a Professional Fiduciary before the legislation passed do I still need to take the exam?

A. Yes. The legislation did not include an exception to the exam for fiduciaries practicing prior to the creation of the licensing program.

Q. If I am a Registered Guardian by the CGC do I need to take the California Professional Fiduciary Licensing Examination?

A. Yes. The law did not include an exception to the exam for Registered Guardians.

Q. If I am a Registered Guardian and a Certified California Fiduciary do I need to take the California Professional Fiduciary Examination?

A. Yes. The law did not include an exception to the exam for fiduciaries whom are both Registered Guardians and Certified California Fiduciaries.

Q. What are the requirements for a California Professional Fiduciary once licensed?

A. A California Professional Fiduciary must comply with the licensing laws, with the applicable Rules of Court and all other relevant state and federal laws.

EDUCATION/EXPERIENCE QUALIFICATION

Q. If I have been a private fiduciary for 10 years, do I have the necessary experience to qualify for licensure?

A. Yes. Under the legislation, if you have been working as a private fiduciary for 5 or more years or have had 5 or more years experience working with substantive fiduciary responsibilities as defined in the Act, you have met the experience/education qualification for licensure.

Q. If I have an associate of arts degree and have worked as a fiduciary for only one year do I qualify for licensure?

A. No. You must have a baccalaureate degree of arts or sciences, or an associate of arts or sciences degree AND at least 3 years of required experience to qualify for licensure.

PRE-LICENSING PROFESSIONAL EDUCATION

Q. If I was a private fiduciary before the legislation passed do I still need to earn 30 hours of pre-licensing education credit to become licensed?

A. Yes. The legislation did not include an exception to the pre-licensing education credit requirement for licensure.

Q. What dates of qualifying courses can be applied to the pre-licensing education credit requirement?

A. The pre-licensing education credit must be earned in 2007 or later, except for courses taken from the Cal State Fullerton University Extended Education program, of which credits taken anytime can be applied; but, all credits must be earned by the time you submit your application package to the Bureau to be considered for licensure.

Q. If I earned a Certificate in Fiduciary Management from the Cal State Fullerton University Extended Education program in 2005 will this qualify for the 30 hours of pre-licensing education credit requirement?

A. Yes. A Certificate in Fiduciary Management from the Cal State Fullerton University Extended Education program earned anytime will qualify for the 30 hours of pre-licensing education credit requirement.

Q. What courses qualify for the pre-licensing education credit requirement for licensure?

A. You must take eligible education courses which are relevant to fiduciary responsibilities of estate management or of the person that impart knowledge or address the areas of proficiency, competency, and performance of a fiduciary in at least one of the following

subject topics: conservatorship, guardianship, trust administration, the California court system relative to fiduciaries, or ethics: and, the courses must be offered or approved by an approved educational entity in accordance with the Act to earn pre-licensing education credit.

Q. What approved educational entities may offer or approve eligible education courses?

A. The following educational entities may offer or approve eligible education courses in accordance with the requirements of the Act:

1. An accredited educational institution;
2. An education provider offering courses sponsored by a local court of the State of California;
3. An education provider offering courses approved by the California State Bar for continuing education;
4. An accountancy organization or an education provider, if the education qualifies with the California State Board of Accountancy for continuing education credit for renewal of an individual license as a Certified Public Accountant;
5. An education provider offering courses registered with the Certified Financial Planner Board of Standards, Inc.;
6. An education provider offering courses approved by the California Department of Insurance;
7. An education provider of continuing education courses approved by the California Board of Registered Nursing;
8. An education provider offering courses approved by the California Board of Psychology;
9. An education provider offering courses approved by the California Board of Behavioral Sciences;
10. The California Department of Mental Health, Social Services and Developmental Services;
11. The Professional Fiduciary Association of California;
12. The California State Association of Public Administrators, Public Guardians, and Public Conservators;
13. The National Guardianship Association and its state affiliates;
14. The National Association of Professional Geriatric Care Managers;
15. The American Bar Association;
16. The American Society of Aging;
17. The Gerontological Society of America;
18. The National Association of Social Workers;
19. The National College of Probate Judges;
20. The National Elder Law Foundation;
21. The American Bar Association and its training providers; and,
22. The Cannon Financial Institute.

Q. If I took a 3 hour education course in January 2007 in healthcare for seniors approved by the California Board of Registered Nursing for continued education would that count towards the 30 hours of pre-licensing education credit requirement?

A. Yes. The course is relevant to fiduciary responsibilities in at least one of the specified topics and is offered by an approved education provider.

QUESTIONS FOR CONSUMERS

Q. How do I verify the license of a California Professional Fiduciary?

A. The license of a California Professional Fiduciary will be verifiable on the Bureau's website once the fiduciary becomes licensed.

Q. What if a licensed California Professional Fiduciary violates the law?

A. The Bureau can bring an enforcement action against a licensee who violates the law. Enforcement actions can result in fines, sanctions, and license suspensions or revocations. The Bureau may also refer suspected criminal cases to the Office of the Attorney General or to local district attorneys for criminal prosecution.

Q. What if a mandated Professional Fiduciary is practicing without a license.

A. It is a violation of the Bureau's laws to practice without a license and it is a crime subject to criminal prosecution.

Q. How do I file a complaint against a licensed California Professional Fiduciary?

A. You may contact the Bureau or visit the Bureau's website to obtain details on how to file a complaint against a licensee.

Memorandum

CBA Agenda Item III.
February 24, 2011

To : CBA Members

Date : February 16, 2011

Telephone : (916) 561-1344

Facsimile : (916) 263-3674

E-mail : vjohnston@cba.ca.gov

From : Vincent Johnston
Associate Analyst

Subject : Discussion of Previously Proposed Consolidation of the CBA and the Professional Fiduciaries Bureau (PFB)

On May 14, 2009 former Governor Schwarzenegger released several fiscal year 2009-10 May Revision General Fund Proposals, which were intended to continue the work of the California Performance Review project. Among the eleven proposals was a proposal to consolidate the Professional Fiduciaries Bureau (PFB) under the California Board of Accountancy (CBA).

On June 15, 2009 the Senate Committee on Business, Professions, & Economic Development (BP&ED) met to discuss the former Governor's proposal.

Attachment 1 is the portion of the agenda for that hearing that relates to the CBA and PFB consolidation. Included in the agenda is a "comments" section that outlines potential problems of consolidating the two entities. As stated in the agenda:

"There appears to be no relationship to professional standards or responsibility between the two professions. [...] Licensure of professional fiduciaries was established to protect vulnerable seniors, incapacitated persons and children. CPAs licensure on the other hand provides professional standards for financial business related services. The professional fiduciary often acts in accordance with limitations and specifications imposed by the Probate Court, and must coordinate his or her activities with the Court. The CPA is bound by a professional code of ethics and other requirements specified by the national association and national board."

The agenda goes on to include:

"In addition, consolidation would likely result in less oversight for consumers as the professional fiduciary licensing is absorbed by the CBA. In addition, the current composition of the CBA does not have the programmatic expertise to appropriately regulate professional fiduciaries."

At the hearing, CBA Executive Officer Patti Bowers expressed to the Committee that the CBA would need to be assured that the CBA Enforcement Division would be staffed at a level to assume the additional enforcement duties, and that the CBA would be discussing the possible consolidation at the July 2009 meeting. After testimony and discussions regarding the consolidation plan, no legislation was introduced to consolidate the CBA and PFB.

Because no legislation was introduced, the CBA held no further discussion on the topic.

Staff will be at the meeting to answer any questions.

STAFF

BILL GAGE
Chief Consultant
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KATHY SULLIVAN
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California Legislature

Senate Committee on Business, Professions & Economic Development

Senator
Gloria Negrete McLeod
Chair

AGENDA

Monday, June 15, 2009
1 p.m. or upon adjournment of session
State Capitol, Room 3191

SUBJECT: Governor's Elimination, Consolidation and Reorganization Proposals

INTRODUCTIONS AND OPENING REMARKS

Senator Negrete McLeod, Chair
Other members of the Committee

I. OVERVIEW OF ADMINISTRATION RECOMMENDATIONS

- Department of Finance
- Department of Consumer Affairs
- Department of Real Estate
- Legislative Analyst's Office
- Center for Public Interest Law

II. Elimination, Consolidation and Reorganization Proposals

1. Should the Department of Real Estate and the Office of Real Estate Appraisers be consolidated with the Department of Corporations, and the Department of Financial Institutions?

- Department of Real Estate Representative
- Office of Real Estate Appraisers Representative
- Professional Groups, Organizations, and Individuals



2. Should the Bureau of Naturopathic Medicine be Eliminated?
 - Bureau of Naturopathic Medicine Representative
 - Osteopathic Medical Board Representative
 - Professional Groups, Organizations, and Individuals
3. Should the Telephone Medical Advice Services Bureau be Eliminated?
 - Telephone Medical Advice Services Bureau Representative
 - Professional Groups, Organizations, and Individuals
4. Should the Board of Geologists and Geophysicists be consolidated with the State Mining and Geology Board?
 - Board of Geologists and Geophysicists Representative
 - State Mining and Geology Board Representative
 - Professional Groups, Organizations, and Individuals
5. Should the Professional Fiduciaries Bureau be consolidated under the Board of Accountancy?
 - Professional Fiduciaries Bureau Representative
 - Board of Accountancy Representative
 - Professional Groups, Organizations, and Individuals
6. Should the Board of Behavioral Sciences, the Board of Psychology, the duties of the Board of Vocational Nurses and Psychiatric Technicians to oversee psychiatric technicians be consolidated into a new Board of Mental Health?
 - Board of Behavioral Sciences Representative
 - Board of Psychology Representative
 - Board of Vocational Nurses and Psychiatric Technicians Representative
 - Professional Groups, Organizations, and Individuals
7. Should the Hearing Aid Dispensers Bureau be consolidated under the Speech-Language Pathology and Audiology Bureau?
 - Hearing Aid Dispensers Bureau Representative
 - Speech-Language Pathology and Audiology Board Representative
 - Professional Groups, Organizations, and Individuals
8. Should the nursing oversight functions of the Board of Vocational Nursing and Psychiatric Technicians be consolidated with the Board of Registered Nursing?
 - Board of Vocational Nursing and Psychiatric Technicians Representative
 - Board of Registered Nursing Representative
 - Professional Groups, Organizations, and Individuals

5. Issue: Should the Professional Fiduciaries Bureau be consolidated under the Board of Accountancy?

Program Description

The Professional Fiduciaries Bureau and its Advisory Committee was created in 2006, to provide licensure and regulation of professional fiduciaries. Professional fiduciaries serve as court-appointed conservators, guardians, trustees and agents under durable powers of attorney for healthcare or finances and other critical services to vulnerable seniors, disabled persons, and children. Professional fiduciaries can take complete control over the lives of their clients, deciding where they will live, who they can see, and how their money is spent. Currently 346 persons are licensed as professional fiduciaries by the Bureau. The Bureau has a proposed budget of \$386,000 for FY 2009-10, and a staff of 1.9 persons.

The California Board of Accountancy (CBA) ensures that only qualified persons and firms are licensed to practice public accountancy and that appropriate standards of competency and practice, including ethics, objectivity, and independence are established and enforced. CPAs provide accounting, tax, auditing, financial planning, and management consulting services to clients. In the law, the practice of a professional fiduciary and the practice of a certified public accountant are exclusive of each other. A CPA acting within their scope of practice is exempt from licensure as a professional fiduciary. The CBA licenses more than 45,000 certified public accountants, and has an annual budget of \$12.9 million, and 84.5 authorized positions. The board consists of 15 members; 7 licensees and 8 public members. The Senate Rules Committee and the Speaker of the Assembly each appoints a public member, and the remaining 13 members are appointed by the Governor.

History

Although the Professional Fiduciary Act was established in 2006, the first licenses were issued on July 1, 2008, and the licensing requirements were not fully mandated until January 1, 2009. The Professional Fiduciaries Bureau is in the first licensing cycle of its existence, and there is little programmatic history of note. The current licensing population of 346 is expected to grow as the number of older Californians increases.

California's population of people 65 years of age or older is surpassing that in other states. The number of California's population 65 years of age or older is expected to grow from 3.6 million people in the year 2000, to 6.2 million people in the year 2020, an increase of 72 percent. As the population of California continues to grow and age, an increasing number of people in the state are unable to provide properly for their personal needs, manage their financial resources, or resist fraud or undue influence as well as fiscal, emotional, and physical harm. In addition, there is an increasing use of trusts and durable powers of attorney by individuals seeking to provide for potential incapacity. As a result, it is likely that the population of licensed professional fiduciaries will continue to increase as the population ages.

Comments

There appears to be no relationship to professional standards or responsibility between the two professions. While the practice of a professional fiduciary often involves the financial oversight of a client's affairs, the professional fiduciary must make decisions on behalf of the client which are weighted in the client's best interests. The CPA on the other hand must maintain independence from the client in dealing with client issues. Furthermore, the professional fiduciary may be responsible for the day to day decisions regarding a client's welfare, including where the client lives, daily health and care, health care decisions, and the care and maintenance of the client's personal property and dwelling. Licensure of professional fiduciaries was established to protect vulnerable seniors, incapacitated persons and children. CPAs licensure on the other hand provides professional standards for financial business related services. The professional fiduciary often acts in accordance with limitations and specifications imposed by the Probate Court, and must coordinate his or her activities with the Court. The CPA is bound by a professional code of ethics and other requirements specified by the national association and national board.

In addition, consolidation would likely result in less oversight for consumers as the professional fiduciary licensing is absorbed by the CBA. In addition, the current composition of the CBA does not have the programmatic expertise to appropriately regulate professional fiduciaries.

6. Issue: Should the Board of Behavioral Sciences, the Board of Psychology, and the duties of the Board of Vocational Nurses and Psychiatric Technicians to oversee psychiatric technicians be consolidated into a new Board of Mental Health?

Program Description

The Board of Behavioral Sciences (BBS) licenses and regulates marriage and family therapists (MFT), licensed clinical social workers (LCSW), and licensed educational psychologists (LEP). The confidential and sensitive nature of services these licensees perform necessitates the development and enforcement of performance standards and competence consistent with the public welfare. The Board ensures that minimum competency standards are met by establishing masters-degree level educational and experience requirements, conducting examinations, investigating violations of professional ethics and law, and disciplining licensees when appropriate.

The BBS has more than 64,000 licensees and registrants and has an annual budget of \$7.3 million, and a staff of 38.3 authorized positions. The board consists of 11 members; 5 licensees (2 MFTs, 2 LCSWs, 1, LEP) and 6 public members. The Senate Rules Committee and the Speaker of the Assembly each appoints a public member, and the remaining 9 members are appointed by the Governor. BBS is a "special fund" agency, receiving revenues only from licensing, renewal and other regulatory fees.

The Board of Psychology (BOP) protects consumers of psychological services from the unsafe and unqualified practice of psychology. Additionally, the board focuses resources to educate its public (consumers, licensees, registrants and applicants) about

Memorandum

CBA Agenda Item IV.
February 24, 2011

To : CBA Members

Date : February 7, 2011

Telephone: (916) 561-1792

Facsimile : (916) 263-3675

E-mail : mstanley@cba.ca.gov

From : Matthew Stanley
Legislation/Regulation Analyst

Subject : Overview of PFB Laws and Regulations

The Professional Fiduciaries Act

The Professional Fiduciaries Act (Fiduciaries Act) (**Attachment 1**) was signed into law in 2006 establishing the Professional Fiduciaries Bureau (PFB). In general, most of the concepts of the Fiduciaries Act will be familiar to California Board of Accountancy (CBA) members; however, there are some differences that staff would like to point out.

First of all, the Fiduciaries Act covers Business and Professions (B&P) Code Sections 6500-6592. This is broken down into six Articles covering General Provisions, Administration, Licensing, Practice Provisions, Enforcement and Disciplinary Proceedings, and Revenue. All of the following code section references will be within the Fiduciaries Act unless otherwise noted.

Section 6520 required the PFB to establish in its regulations a Code of Ethics which was done. However, Section 6520 also requires that any future amendments to the Code of Ethics are to be implemented on the individual licensee following the licensee's next renewal date. In effect, this creates a year-long rolling implementation of changes to the Code of Ethics.

Section 6530 establishes certain exemptions from licensure as a professional fiduciary. California licensed attorneys have a blanket exemption, and California licensed CPAs and Enrolled Agents are exempt as long as they are acting within the scope of their practice.

Section 6533 establishes the qualifications for licensure. There is an age requirement (21), a United States citizen or legal immigrant requirement, and a credit check requirement along with other expected requirements. However, there are three education/experience pathways to licensure. Pathway 1 requires a baccalaureate degree from an accredited institution. Pathway 2 requires an

Discussion of Laws and Regulations Pertaining to the Professional Fiduciaries Bureau

Page 2 of 3

associate degree from an accredited institution and three years of experience. Pathway 3 requires five years of experience obtained prior to July 1, 2012. Experience is defined as working as a professional fiduciary or working with substantive fiduciary responsibilities for a professional fiduciary, public agency, or financial institution acting as a conservator, guardian, trustee, personal representative, or agent under a power of attorney.

The term “substantive fiduciary responsibilities” bears similarity to the CBA’s discussions over “general experience.” Similarly, the term “working...for” may bring to mind CBA discussions regarding “supervision.” Staff only point these out as issues that may be of concern in the future.

Section 6538 requires applicants for licensure to complete 30 hours of prelicensing education, and, once licensed, it requires 15 hours of continuing education each year in order to renew the license. Section 6540 requires that any entity providing these education requirements must be preapproved by the PFB.

Section 6541 sets forth the license renewal requirements including the establishment of an annual renewal period and the filing of an annual statement. Section 6561 sets forth the requirements of that annual statement, which must be filed with the PFB 60 days prior to license expiration (Section 6562).

Section 6580 requires that, in addition to disciplinary actions, citations and fines are placed on the PFB’s Web site.

Section 6583 requires the PFB to establish a system of administrative citations and fines under B&P Code Section 125.9. Section 125.9 allows boards and bureaus to establish such a system through the regulatory process. It requires that the regulations include several provisions and lists several other provisions that are optional. The PFB does not have these required regulations in place.

Section 6592 allows the PFB to set its fees for examination, reexamination, licensing and renewal. The exam fees are to be set to recover actual exam costs, and the licensing and renewal fees are to be set to cover the PFB’s operating costs. There are no caps on these fees as there are in the Accountancy Act.

Professional Fiduciaries Regulations

The Professional Fiduciaries Regulations (**Attachment 2**) are found in Title 16 Division 41 of the California Code of Regulations. This Division is broken down into nine Articles covering General Provisions, Application and Licensure, Prelicensure and Continuing Education, Code of Ethics, Examination, License Denial, Reporting Duties of Licensees, Renewal of License, and Fees. Division 41 covers Sections 4402-4580.

Discussion of Laws and Regulations Pertaining to the Professional Fiduciaries Bureau

Page 3 of 3

Section 4424 describes the PFB's responsibility in the licensure process. The PFB has 90 days to review the application and notify the applicant of its acceptance or deficiencies. After acceptance, the PFB has another 30 days to notify the applicant of approval or denial of licensure. It is after approval that the applicant pays their initial license fee. The initial licensing period expires on the last day of the licensee's second birthday after licensure (Section 4428). This means that the initial license period is at least 12 months, and maybe up to 24 months, from licensure. The initial license fee is prorated.

Article 3, Prelicensure and Continuing Education, spells out, in detail, which courses and providers are preapproved by the PFB. The PFB approved education providers are listed in Section 4446 which can be seen in Attachment 2.

The Code of Ethics required by Section 6520 of the B&P Code is found in Article 4 of the regulations.

Section 4500 outlines the examination process. Once approved by the PFB to take the examination, an applicant has 12 months to pass and may retake the exam four additional times during that 12 month period. In addition, the exam has to contain a portion specific to California law.

Section 4542 provides additional detail as to what is required in the Annual Statement provided by licensees which can be seen in Attachment 2.

Section 4560 outlines the renewal process. An applicant for renewal must have filed their annual statement at least 60 days prior to their expiration date, completed 15 hours of continuing education, and paid the renewal fee. If a renewal is more than 30 days late, the licensee also must pay a delinquency fee (Section 4562).

Section 4580 outlines the PFB's fees. The application fee for licensure is \$400. The initial license fee (for 12 months) is \$600. The renewal fee is \$700. The delinquency fee is \$150; and the fee for a replacement license is \$25. There does not appear to be a fee for the examination.

Attachments

CALIFORNIA BUSINESS AND PROFESSIONS CODE

Division 3. Professions and Vocations Generally

Chapter 6. Professional Fiduciaries

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Article 1- General Provisions

§6500. Short Title

This chapter shall be known as the Professional Fiduciaries Act.

§6501. Definitions

As used in this chapter, the following terms have the following meanings:

- (a) "Act" means this chapter.
 - (b) "Bureau" means the Professional Fiduciaries Bureau within the Department of Consumer Affairs, established pursuant to Section 6510.
 - (c) "Client" means an individual who is served by a professional fiduciary.
 - (d) "Department" means the Department of Consumer Affairs.
 - (e) "Licensee" means a person who is licensed under this chapter as a professional fiduciary.
 - (f) (1) "Professional fiduciary" means a person who acts as a conservator of the person, the estate, or person and estate, or guardian of the estate, or person and estate, for two or more individuals at the same time who are not related to the professional fiduciary or to each other.
 - (2) "Professional fiduciary" also means a person who acts as a trustee, agent under a durable power of attorney for health care, or agent under a durable power of attorney for finances, for more than three individuals, at the same time.
- In counting individuals under this paragraph to determine whether a person is a professional fiduciary:
- (A) Individuals who are related to the fiduciary shall not be counted.
 - (B) All individuals who are related to each other shall be counted as one individual.
 - (C) All trustors who are related to each other shall be counted as one individual, and neither the number of trusts nor the number of beneficiaries of those trusts shall be counted.
 - (3) For purposes of this subdivision, "related" means related by blood, adoption, marriage, or registered domestic partnership.
 - (4) "Professional fiduciary" does not include any of the following:
 - (A) A trust company, as defined in Section 83 of the Probate Code.
 - (B) An FDIC-insured institution, or its holding companies, subsidiaries, or affiliates.
- For the purposes of this subparagraph, "affiliate" means any entity that shares an ownership interest with, or that is under the common control of, the FDIC-insured institution.
- (C) Any public agency, including the public guardian, public conservator, or other agency of the State of California or of a county of California or any regional center for persons with developmental disabilities as defined in Section 4620 of the Welfare and Institutions Code.
 - (D) A person employed by an entity or agency described in subparagraph (A), (B), or (C) who is acting within the course and scope of that employment, and a public officer of an agency described in subparagraph (C) acting in the course and scope of official duties.

(E) Any person whose sole activity as a professional fiduciary is as a broker-dealer, broker-dealer agent, investment adviser, or investment adviser representative registered and regulated under the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code), the Investment Advisers Act of 1940 (15 U.S.C. Sec. 80b-1 et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.), or involves serving as a trustee to a company regulated by the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

(g) "Committee" means the Professional Fiduciaries Advisory Committee, as established pursuant to Section 6511.

§6502. Licensure

(a) Every person who is required to register with the Statewide Registry maintained by the Department of Justice under Chapter 13 (commencing with Section 2850) of Part 4 of Division 4 of the Probate Code prior to January 1, 2007, shall be required to obtain a license as a professional fiduciary under this chapter.

(b) Every person who is required to file information with the clerk of the court under Article 4 (commencing with Section 2340) of Chapter 3 of Part 4 of Division 4 of the Probate Code prior to January 1, 2007, shall be required to obtain a license as a professional fiduciary under this chapter.

Article 2- Administration

§6510. Professional Fiduciaries Bureau; Chief

(a) There is within the jurisdiction of the department the Professional Fiduciaries Bureau. The bureau is under the supervision and control of the director. The duty of enforcing and administering this chapter is vested in the chief of the bureau, who is responsible to the director. Every power granted or duty imposed upon the director under this chapter may be exercised or performed in the name of the director by a deputy director or by the chief, subject to conditions and limitations as the director may prescribe.

(b) The Governor shall appoint, subject to confirmation by the Senate, the chief of the bureau, at a salary to be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve under the direction and supervision of the director and at the pleasure of the Governor.

(c) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date. The repeal of this section renders the bureau subject to the review required by Division 1.2 (commencing with Section 473).

Notwithstanding any other provision of law, upon the repeal of this section, the responsibilities and jurisdiction of the bureau shall be transferred to the Professional Fiduciaries Advisory Committee, as provided by Section 6511.

§6511. Professional Fiduciaries Advisory Committee; Membership; Terms; Vacancies; Per diem Expenses; Duties

(a) There is within the bureau a Professional Fiduciaries Advisory Committee. The committee shall consist of seven members; three of whom shall be licensees actively engaged as professional fiduciaries in this state, and four of whom shall be public members. One of the public members shall be a member of a nonprofit organization advocating on behalf of the elderly, and one of the public members shall be a probate court investigator.

(b) Each member of the committee shall be appointed for a term of four years, and shall hold office until the appointment of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.

(c) Vacancies shall be filled by the appointing power for the unexpired portion of the terms in which they occur. No person shall serve as a member of the committee for more than two consecutive terms.

(d) The Governor shall appoint the member from a nonprofit organization advocating on behalf of the elderly, the probate court investigator, and the three licensees. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

(e) Every member of the committee shall receive per diem and expenses as provided in Sections 103 and 113.

(f) The committee shall do all of the following:

(1) Examine the functions and policies of the bureau and make recommendations with respect to policies, practices, and regulations as may be deemed important and necessary by the director or the chief to promote the interests of consumers or that otherwise promote the welfare of the public.

(2) Consider and make appropriate recommendations to the bureau in any matter relating to professional fiduciaries in this state.

(3) Provide assistance as may be requested by the bureau in the exercise of its powers or duties.

(4) Meet at least once each quarter. All meetings of the committee shall be public meetings.

(g) The bureau shall meet and consult with the committee regarding general policy issues related to professional fiduciaries.

(h) Notwithstanding any other provision of law, if the bureau becomes inoperative or is repealed in accordance with Section 6510, or by subsequent acts, the committee shall succeed to and is vested with all the duties, powers, purposes, responsibilities, and jurisdiction, not otherwise repealed or made inoperative, of the bureau and its chief. The succession of the committee to the functions of the bureau as provided in this subdivision shall establish the committee as the Professional Fiduciaries Committee in the department within the meaning of Section 22, and all references to the bureau in this code shall be considered as references to the committee.

§6513. Additional Employees

The bureau may employ, subject to civil service and other provisions of law, other employees as may be necessary to carry out the provisions of this chapter under the direction of the chief.

§6514. Required Records

The bureau shall keep a complete record of all its proceedings and all licenses issued, renewed, or revoked, and a detailed statement of receipts and disbursements.

§6515. Powers vested in Bureau and Chief

The duty of administering and enforcing this chapter is vested in the bureau and the chief. In the performance of this duty, the bureau and the chief have all of the powers of, and are subject to all of the responsibilities vested in and imposed upon, the head of a department by Chapter 2 (commencing with Section 11150) of Part 1 of Division 3 of Title 2 of the Government Code.

§6516. Public Protection

Protection of the public shall be the highest priority for the bureau in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

§6517. Power of Bureau to Adopt, Amend, or Repeal Regulations

The bureau may adopt, amend, or repeal, in accordance with the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), regulations necessary to enable the bureau to carry into effect the provisions of law relating to this chapter.

§6518. Duty to Administer Licensing and Regulatory Program

(a) The bureau shall be responsible for administering the licensing and regulatory program established in this chapter.

(b) The bureau shall approve classes qualifying for prelicense education, as well as classes qualifying for annual continuing education required by this chapter. The bureau shall maintain a current list of all approved classes.

(c) The bureau shall arrange for the preparation and administration of licensing examinations.

§6520. Professional Fiduciaries Code of Ethics

The bureau shall adopt, by regulation, a Professional Fiduciaries Code of Ethics. The Professional Fiduciaries Code of Ethics shall be consistent with all statutory requirements, as well as requirements developed by the courts and the Judicial Council. The Professional Fiduciaries Code of Ethics shall be provided electronically on the bureau's Internet Web site and to persons who request an application for licensure. The bureau may, by regulation, amend the Professional Fiduciaries Code of Ethics from time to time, as it deems necessary, provided that no amendment shall be effective with regard to a licensee until the licensee's next annual license renewal cycle, as specified

in subdivision (a) of Section 6541, is completed. Any amendment to the Professional Fiduciaries Code of Ethics shall be included in the license renewal materials sent to a licensee.

Article 3- Licensing

§6530. Licensure Required; Applicability

(a) On and after January 1, 2009, no person shall act or hold himself or herself out to the public as a professional fiduciary unless that person is licensed as a professional fiduciary in accordance with the provisions of this chapter.

(b) This section does not apply to a person licensed as an attorney under the State Bar Act (Chapter 4 (commencing with Section 6000)).

(c) This section does not apply to a person licensed as, and acting within the scope of practice of, a certified public accountant pursuant to Chapter 1 (commencing with Section 5000) of Division 3.

(d) This section does not apply to a person enrolled as an agent to practice before the Internal Revenue Service who is acting within the scope of practice pursuant to Part 10 of Title 31 of the Code of Federal Regulations.

§6531. Expired, Suspended, or Revoked License

No professional fiduciary shall operate with an expired, suspended, or revoked license.

§6532. "Licensed Professional Fiduciary"

A person who has been licensed by the bureau may identify himself or herself as a "licensed professional fiduciary."

§6533. Qualifications for Licensure

In order to meet the qualifications for licensure as a professional fiduciary a person shall meet all of the following requirements:

- (a) Be at least 21 years of age.
- (b) Be a United States citizen, or be legally admitted to the United States.
- (c) Have not committed any acts that are grounds for denial of a license under Section 480 or 6536.
- (d) Submit fingerprint images as specified in Section 6533.5 in order to obtain criminal offender record information.
- (e) Have completed the required prelicensing education described in Section 6538.
- (f) Have passed the licensing examination administered by the bureau pursuant to Section 6539.
- (g) Have at least one of the following:
 - (1) A baccalaureate degree of arts or sciences from a college or university accredited by a nationally recognized accrediting body of colleges and universities or a higher level of education.
 - (2) An associate of arts or sciences degree from a college or university accredited by a nationally recognized accrediting body of colleges and universities, and at least three years of experience working as a professional fiduciary or working with substantive fiduciary responsibilities for a professional fiduciary, public agency, or financial

institution acting as a conservator, guardian, trustee, personal representative, or agent under a power of attorney.

(3) Experience of not less than five years, prior to July 1, 2012, working as a professional fiduciary or working with substantive fiduciary responsibilities for a professional fiduciary, public agency, or financial institution acting as a conservator, guardian, trustee, personal representative, or agent under a power of attorney.

(h) Agree to adhere to the Professional Fiduciaries Code of Ethics and to all statutes and regulations.

(i) Consent to the bureau conducting a credit check on the applicant.

(j) File a completed application for licensure with the bureau on a form provided by the bureau and signed by the applicant under penalty of perjury.

(k) Submit with the license application a nonrefundable application fee, as specified in this chapter.

§6533.5. Criminal Offender Record Information

Criminal offender record information shall be obtained on each applicant as provided in this section.

(a) Each applicant shall submit fingerprint images to the Department of Justice for the purpose of obtaining criminal offender record information regarding state and federal level convictions and arrests, including arrests where the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(b) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a fitness determination to the bureau.

(c) The Department of Justice shall provide a response to the bureau pursuant to subdivision (p) of Section 11105 of the Penal Code.

(d) The bureau shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code.

(e) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

§6534. Information Required to be on File

(a) The bureau shall maintain the following information in each licensee's file, shall make this information available to a court for any purpose, including the determination of the appropriateness of appointing or continuing the appointment of, or removing, the licensee as a conservator, guardian, trustee, or personal representative, and shall otherwise keep this information confidential, except as provided in subdivisions (b) and (c) of this section:

(1) The names of the licensee's current conservatees or wards and the trusts or estates currently administered by the licensee.

(2) The aggregate dollar value of all assets currently under the licensee's supervision as a professional fiduciary.

(3) The licensee's current addresses and telephone numbers for his or her place of business and place of residence.

(4) Whether the licensee has ever been removed for cause as a conservator, guardian, trustee, or personal representative or has ever resigned as a conservator, guardian, trustee, or personal representative in a specific case, the circumstances causing that removal or resignation, and the case names, court locations, and case numbers associated with the removal or resignation.

(5) The case names, court locations, and case numbers of all conservatorship, guardianship, or trust or other estate administration cases that are closed for which the licensee served as the conservator, guardian, trustee, or personal representative.

(6) Information regarding any discipline imposed upon the licensee by the bureau.

(7) Whether the licensee has filed for bankruptcy or held a controlling financial interest in a business that filed for bankruptcy in the last 10 years.

(b) The bureau shall make the information in paragraphs (2), (4), (6), and (7) of subdivision (a) available to the public.

(c) The bureau shall also publish information regarding licensees on the Internet as specified in Section 27. The information shall include, but shall not be limited to, information regarding license status and the information specified under subdivision (b).

§6535. Timeliness of Approval or Denial of Licensure

The bureau shall approve or deny licensure in a timely manner to applicants who apply for licensure. Upon approval of a license, the bureau shall notify the applicant of issuance of the license, and shall issue a license certificate identifying him or her as a "licensed professional fiduciary."

§6536. Criteria for Which Application Will be Denied

The bureau shall review all applications for licensure and may investigate an applicant's qualifications for licensure. The bureau shall approve those applications that meet the requirements for licensure, but shall not issue a license to any applicant who meets any of the following criteria:

(a) Does not meet the qualifications for licensure under this chapter.

(b) Has been convicted of a crime substantially related to the qualifications, functions, or duties of a fiduciary.

(c) Has engaged in fraud or deceit in applying for a license under this chapter.

(d) Has engaged in dishonesty, fraud, or gross negligence in performing the functions or duties of a fiduciary, including engaging in such conduct prior to January 1, 2009.

(e) Has been removed as a fiduciary by a court for breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference, or has demonstrated a pattern of negligent conduct, including a removal prior to January 1, 2009, and all appeals have been taken, or the time to file an appeal has expired.

§6537. Right to Appeal Denial

The bureau may deny a license for the reasons specified in Section 480 or 6536. An applicant notified of the denial of his or her application for licensure shall have the right to appeal to the bureau as specified in Chapter 2 (commencing with Section 480) of Division 1.5.

§6538. Education Requirements

(a) To qualify for licensure, an applicant shall have completed 30 hours of prelicensing education courses provided by an educational program approved by the bureau.

(b) To renew a license, a licensee shall complete 15 hours of approved continuing education courses each year.

(c) The cost of any educational course required by this chapter shall not be borne by any client served by a licensee.

§6539. Licensing Examination

As a requirement for licensure, an applicant shall take and pass the licensing examination administered by the bureau. The bureau shall determine the frequency with which the examination will be given. The bureau shall also determine the frequency with which an applicant for reexamination may sit for the examination. The bureau shall administer the examination through a computer-based examination process and may also administer the examination through other means.

§6540. Requirement of Educational Offerors

Individuals, entities, agencies, and associations that propose to offer educational programs qualifying for the prelicensing educational or continuing educational requirements of this chapter shall apply for and obtain the approval of the bureau.

§6541. License Expiration and Renewal

(a) A license shall expire one year after it was issued on the last day of the month in which it was issued.

(b) A license may be renewed by filing a renewal application with the bureau, submitting the annual statement required by Section 6561, submitting proof of the licensee's compliance with the continuing education requirements of this chapter, and payment of the renewal fee set by the bureau, provided that the licensee has not engaged in conduct that would justify the bureau's refusal to grant the renewal. Acts justifying the bureau's refusal to renew a license shall include any of the following:

(1) Conviction of a crime substantially related to the qualifications, functions, or duties of a fiduciary.

(2) Fraud or deceit in obtaining a license under this chapter.

(3) Dishonesty, fraud, or gross negligence in performing the functions or duties of a professional fiduciary.

(4) Removal by a court as a fiduciary for breach of fiduciary duty if all appeals have been taken or the time to file an appeal has expired.

Article 4- Practice Provisions**§6560. Records of Client Accounts**

A licensee shall keep complete and accurate records of client accounts, and shall make those records available for audit by the bureau.

§6561. Annual Statement; Contents; Electronic Filings

(a) A licensee shall initially, and annually thereafter, file with the bureau a statement under penalty of perjury containing the following:

- (1) Her or his business address, telephone number, and facsimile number.
 - (2) Whether or not he or she has been removed as a conservator, guardian, trustee, or personal representative for cause. The licensee may file an additional statement of the issues and facts pertaining to the case.
 - (3) The case names, court locations, and case numbers for all matters where the licensee has been appointed by the court.
 - (4) Whether he or she has been found by a court to have breached a fiduciary duty.
 - (5) Whether he or she has resigned or settled a matter in which a complaint has been filed, along with the case number and a statement of the issues and facts pertaining to the allegations.
 - (6) Any licenses or professional certificates held by the licensee.
 - (7) Any ownership or beneficial interests in any businesses or other enterprises held by the licensee or by a family member that receives or has received payments from a client of the licensee.
 - (8) Whether the licensee has filed for bankruptcy or held a controlling financial interest in a business that filed for bankruptcy in the last ten years.
 - (9) The name of any persons or entities that have an interest in the licensee's professional fiduciary business.
 - (10) Whether the licensee has been convicted of a crime.
- (b) The statement by the licensee required by this section may be filed electronically with the bureau, in a form approved by the bureau. However, any additional statement filed under paragraph (2) of subdivision (a) shall be filed in writing.

§6562. Filing of Annual Statement

The annual statement shall be filed with the bureau 60 days prior to the expiration of the license as provided in subdivision (a) of Section 6541.

Article 5- Enforcement and Disciplinary Proceedings

§6580. Investigation of Alleged Violation; Sanctions

(a) The bureau may upon its own, and shall, upon the receipt of a complaint from any person, investigate the actions of any professional fiduciary. The bureau shall review a professional fiduciary's alleged violation of statute, regulation, or the Professional Fiduciaries Code of Ethics and any other complaint referred to it by the public, a public agency, or the department, and may impose sanctions upon a finding of a violation or a breach of fiduciary duty.

(b) Sanctions shall include any of the following:

- (1) Administrative citations and fines as provided in Section 125.9 for a violation of this chapter, the Professional Fiduciaries Code of Ethics, or any regulation adopted under this chapter.
- (2) License suspension, probation, or revocation.
- (c) The bureau shall provide on the Internet information regarding any sanctions imposed by the bureau on licensees, including, but not limited to, information regarding

citations, fines, suspensions, and revocations of licenses or other related enforcement action taken by the bureau relative to the licensee.

§6582. Proceedings Governed by Administrative Procedure Act

All proceedings against a licensee for any violation of this chapter or any regulations adopted by the bureau shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and shall be prosecuted by the Attorney General's office, and the bureau shall have all the powers granted therein.

§6582.5. Referral of Case for Criminal Prosecution

Notwithstanding Section 6582, if any violation occurs, in its discretion, the bureau may refer the case to the Attorney General or to the local district attorney for criminal prosecution. The referral of a case for criminal prosecution shall not preclude the bureau from taking any other action provided for in this chapter.

§6583. System of Administrative Citations and Fines

The bureau shall establish a system of administrative citations and fines under Section 125.9 for violations of this chapter, the Professional Fiduciaries Code of Ethics, or any regulation adopted under this chapter.

§6584. Suspension, Revocation, or Denial of License

A license issued under this chapter may be suspended, revoked, denied, or other disciplinary action may be imposed for one or more of the following causes:

(a) Conviction of any felony or any misdemeanor, if the misdemeanor is substantially related to the functions and duties of a professional fiduciary. The record of conviction, or a certified copy thereof, is conclusive evidence of the conviction.

(b) Failure to notify the bureau of a conviction as required by paragraph (10) of subdivision (a) of Section 6561.

(c) Fraud or misrepresentation in obtaining a license.

(d) Fraud, dishonesty, corruption, willful violation of duty, gross negligence or incompetence in practice, or unprofessional conduct in, or related to, the practice of a professional fiduciary. For purposes of this section, unprofessional conduct includes, but is not limited to, acts contrary to professional standards concerning any provision of law substantially related to the duties of a professional fiduciary.

(e) Failure to comply with, or to pay a monetary sanction imposed by, a court for failure to provide timely reports. The record of the court order, or a certified copy thereof, is conclusive evidence that the sanction was imposed.

(f) Failure to pay a civil penalty relating to the licensee's professional fiduciary duties.

(g) The revocation of, suspension of, or other disciplinary action against, any other professional license by the State of California or by another state. A certified copy of the revocation, suspension, or disciplinary action is conclusive evidence of that action.

(h) Violation of this chapter or of the applicable provisions of Division 4 (commencing with Section 1400), Division 4.5 (commencing with Section 4000), Division 4.7 (commencing with Section 4600), or Division 5 (commencing with Section 5000) of the

Probate Code or of any of the statutes, rules, or regulations pertaining to duties or functions of a professional fiduciary.

Article 6- Revenue

§6590. Professional Fiduciary Fund Created

All fees collected by the bureau shall be paid into the Professional Fiduciary Fund in the State Treasury, which is hereby created. The money in the fund shall be available to the bureau for expenditure for the purposes of this chapter only upon appropriation by the Legislature.

§6591. Professional Fiduciary Fund as Successor Fund

The Professional Fiduciary Fund shall be the successor fund to those funds deposited under the Statewide Registry with the Department of Justice pursuant to Chapter 13 (commencing with Section 2850) of Part 4 of Division 4 of the Probate Code.

§6592. Setting of Fees

(a) The fee for a professional fiduciary examination and reexamination shall be set by the bureau through regulation at the amount necessary to recover the actual costs to develop and administer the examination.

(b) The license fee to obtain a professional fiduciary license shall be set by the bureau.

(c) The renewal fee for a professional fiduciary license shall be set by the bureau.

(d) The license and renewal fees under subdivisions (b) and (c) shall be set by the bureau through regulation at an amount necessary to recover the costs to the bureau in carrying out the provisions of this chapter.

CALIFORNIA CODE OF REGULATIONS
Title 16. Professional and Vocational Regulations
Division 41. Professional Fiduciaries Bureau

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Article 1- General Provisions

§ 4400. Introduction.

These regulations are adopted by the Professional Fiduciaries Bureau to implement and make specific the provisions of the Professional Fiduciaries Act, commencing with Section 6500 of the Business and Professions Code.

Note: Authority cited: Section 6517, Business and Professions Code. Reference: Sections 6500 and 6510, Business and Professions Code.

§ 4402. Mailing Address of Bureau.

The mailing address of the Professional Fiduciaries Bureau is P.O. Box 989007, West Sacramento, CA 95798-9007.

Note: Authority cited: Section 6517, Business and Professions Code. Reference: Sections 6500 and 6510, Business and Professions Code.

§ 4404. Filing of Address of Record.

Each licensee shall have on file with the Bureau his or her correct street addresses, which shall include a physical business and residence address. In addition, each licensee shall designate an address of record that shall be public information, which may consist of a post office box number or other viable mailing address. Each licensee shall within fifteen (15) business days notify the Bureau in writing of any changes in his or her street or mailing addresses, giving both the old and new addresses and any changes.

Note: Authority cited: Sections 136 and 6517, Business and Professions Code. Reference: Sections 136, 6510 and 6534, Business and Professions Code.

§ 4406. Definitions.

For the purpose of the regulations contained in this division, the term:

- (a) "Act" means the provisions of the Professional Fiduciaries Act, Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code.
- (b) "Bureau" means the Professional Fiduciaries Bureau within the Department of Consumer Affairs, established pursuant to 6510 of the Business and Professions Code.
- (c) "Licensee" means a person who is licensed under the Professional Fiduciaries Act, Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code as a "licensed professional fiduciary" pursuant to Section 6536.
- (d) "Consumer," under the Act, means an individual with whom the licensee has established a fiduciary relationship including: a conservatee when the fiduciary is acting as a court-appointed conservator; a ward when the fiduciary is acting as a court-appointed guardian, a principal when the fiduciary is acting under a durable power of attorney, and a beneficiary when the fiduciary is

acting as a trustee.

(e) Trustee as a Professional Fiduciary - A person acting as a trustee under the Act is an individual who meets the requirements of paragraph (1) and (2) and shall be licensed as a professional fiduciary unless exempt under the Act.

(1) Licensing applies to the following persons

(A) An individual acting as trustee for a trust as defined in Section 82 of the Probate Code that includes at least one individual beneficiary, or

(B) An individual, acting on behalf of an entity appointed as trustee, to perform the functions of a trustee for a trust as defined in Section 82 of the Probate Code that includes at least one individual beneficiary.

(2) Number of non-family member trustors applies as follows:

A professional fiduciary as defined in Section 6501, includes a person acting as trustee for more than three people or more than three families or a combination of people and families that totals more than three, at the same time, who are not related to the professional fiduciary by blood, adoption, marriage, or registered domestic partnership, unless excluded under the Act. Trustors shall be counted and neither beneficiaries nor trusts shall be counted.

Note: Authority cited: Section 6517, Business and Professions Code. Reference: Sections 6500, 6501, 6502, 6510 and 6530, Business and Professions Code.

Article 2- Application and Licensure

§ 4420. Place of Filing.

An application for licensure shall be filed with the Bureau at its designated address.

Note: Authority cited: Section 6517, Business and Professions Code. Reference: Sections 6500, 6510 and 6533, Business and Professions Code.

§ 4422. Application.

(a) A person applying for a license as a professional fiduciary shall submit an application for licensure to the Bureau and pay the application fee required in Section 4580.

(b) An application for licensure shall require the applicant to meet the qualifications of Section 6533 of the Business and Professions Code and, in addition, provide the following information:

(1) For a determination of compliance with the education requirements under subdivision (g) of Section 6533, if applicable, the applicant shall provide the names of the universities or colleges, the dates of graduation, and the applicable degrees awarded.

(2) For a determination of compliance with the experience requirements under subdivision (g) of Section 6533, if applicable, the applicant shall provide information regarding the qualifying substantive fiduciary responsibilities, including type and dates of experience, and contact information for three references, and shall provide consent for the Bureau to contact the references for verification of specified experience.

(3) The applicant's physical business address, telephone number, and facsimile number.

(4) The applicant's designated address of record for public information.

- (5) A list of any license or professional certificate ever held by the applicant, including information regarding the type, state/country, license or certificate number, date issued, status, and whether the license or certificate has been subject to disciplinary action, including revocation or suspension. The applicant may attach a statement of explanation.
- (6) Whether the applicant has filed for bankruptcy within the last ten (10) years or held a controlling financial interest in a business when that business filed for bankruptcy within the last ten (10) years, as required by paragraph (7) of subdivision (a) of Section 6534, and the date of the bankruptcy filing. The applicant may attach a statement of explanation.
- (7) Whether the applicant has ever been convicted of a crime. The applicant may attach a statement of explanation.
- (8) Whether the applicant has ever been found by a court to have breached a fiduciary duty, the date, case name, court location, and case number associated with each breach of fiduciary duty. The applicant shall submit a record of the court findings and orders related to each specific case. The applicant may file an additional statement of the issues and facts pertaining to each case.
- (9) Whether the applicant has ever been removed as a fiduciary by a court for breach of trust, the date, case name, court location, and case number associated with each removal. Whether all related appeals have been taken or the time to file an appeal has expired. The applicant shall submit a record of the court findings and orders related to each specific case. The applicant may file an additional statement of the issues and facts pertaining to each case.
- (10) Whether the applicant has ever resigned as a fiduciary in a matter in which a complaint has been filed with the court, the date the complaint was filed, the date of the resignation, case name, court location, and case number associated with each resignation, and a statement of the issues and facts pertaining to each allegation. The applicant shall submit a record of the court findings and orders related to each specific case.
- (11) Whether the applicant has ever settled as a fiduciary in a matter in which a complaint has been filed with the court, the date the complaint was filed, the date of the settlement, case name, court location, and case number associated with each settlement, and a statement of the issues and facts pertaining to each allegation. The applicant shall submit a record of the court findings and orders related to each specific case.
- (c) As used in this section "complaint" means a civil complaint, a petition, motion, objection, or other pleading filed with the court against the licensee alleging the licensee has not properly performed the duties of a fiduciary.

Note: Authority cited: Section 6517, Business and Professions Code. Reference: Sections 141, 480, 481, 490, 6533, 6534, 6536, 6538, 6539 and 6561, Business and Professions Code.

§ 4424. Review of Application; Processing Time; Issuance of License.

- (a) Within ninety (90) days of receipt of an application for licensure the Bureau shall inform the applicant in writing that it is both complete and accepted for filing or that it is deficient and what specific information or documentation is needed to complete the application. An application is considered complete if it is in compliance with Section 4422.
- (b) Once the application is complete and accepted for filing the Bureau shall inform the applicant in writing within thirty (30) days that he/she are approved or denied for licensure. Once approved for licensure, the applicant shall submit the initial license fee required in Section 4580 subject to the limitation of subdivision (b) of Section 4426 to become a licensed professional fiduciary

under the Act.

Note: Authority cited: Section 6517, Business and Professions Code. Reference: Sections 141, 6535, 6536 and 6537, Business and Professions Code.

§ 4426. Abandonment of Application.

(a) An application for licensure shall be deemed abandoned and the application fee forfeited when the applicant fails to complete the application within twelve (12) months from the date of notification of deficiency or, if applicable, within twelve (12) months from date of notification of examination eligibility as provided for in Section 4500.

(b) An application for licensure shall be deemed abandoned when an applicant approved for licensure by the Bureau fails to submit the initial license fee required in Section 4580 within twelve (12) months from the date of approval for licensure.

Note: Authority cited: Section 6517, Business and Professions Code. Reference: Sections 142 and 6533, Business and Professions Code.

§ 4428. Duration of Initial License Period; First License Renewal Date; Proration of Initial License Fee; Continued Education Requirements for Initial License Period.

(a) To adjust the duration of the initial license period setting the renewal date for each licensee, a professional fiduciary's initial license shall expire at twelve (12) midnight on the last day of the month in which the second birthday of the licensee occurs after the issuance of the license if not renewed. No license shall be issued for less than twelve (12) or more than 24 months.

(b) The initial license fee shall be prorated as required in Section 4580.

Note: Authority cited: Sections 152.6 and 6517, Business and Professions Code. Reference: Sections 134, 152.6 and 6541, Business and Professions Code.

Article 3- Prelicensure and Continuing Education

§ 4440. Prelicensing Education Requirements.

To qualify for licensure under the Act an applicant shall complete thirty (30) hours of prelicensing education credit subject to the conditions of this Article. The following courses shall qualify for prelicensing education credit:

(a) Any education course taken on or after January 1, 2007 that meets the requirements of an approved education course under Section 4444.

(b) Any fiduciary management course taken from the California State University, Fullerton, Extended Education Program.

(c) Any education course taken on or after January 1, 2007 to satisfy the continuing education requirements of Rule 7.1010 and 7.1060 of the California Rules of Court.

Note: Authority cited: Section 6517, Business and Professions Code. Reference: Section 6538, Business and Professions Code.

§ 4442. Continuing Education Requirements.

(a) Annual time requirements.

(1) To renew a license, a licensee shall earn during each annual renewal period a minimum of fifteen (15) hours of continuing education credit from approved education courses as defined in Section 4444 subject to the conditions of this Article.

(2) Courses qualifying for continuing education credit must be completed following licensure and within the one-year renewal period each cycle.

(3) A licensee who serves as an instructor in an approved education course for continuing education as provided for in subdivision (a) of Section 4444, may receive 1.5 hours of continuing education course participation credit for each hour of new course instruction presented. A maximum of 6 of the fifteen (15) hours of continuing education credit may be earned under this paragraph.

(4) A maximum of 4 of the fifteen (15) hours of continuing education credit may be earned through independent study under the supervision of an approved education provider pursuant to Section 4446 that supplies evidence of completion.

(b) Annual subject topic requirements.

(1) Continuing education credit shall be earned by taking approved education courses in at least one of the subject topics as provided for in Section 4444.

(2) At least 2 hours of continuing education credits each year shall be in ethics for fiduciaries.

Note: Authority cited: Section 6517, Business and Professions Code. Reference: Section 6538, Business and Professions Code.

§ 4443. Continued Education for First License Renewal.

For the initial license period established pursuant to Section 4428, each licensee must comply with the continued education requirements of Section 4442.

Note: Authority cited: Sections 152.6 and 6517, Business and Professions Code. Reference: Sections 134 and 152.6, Business and Professions Code.

§ 4444. Approved Education Courses.

(a) Eligible education courses, as defined in subdivision (b), offered or approved by an approved education provider listed in Section 4446, are approved education courses that meet the prelicensing and continuing education requirements of this Article.

(b) Programs, seminars, and courses of study that are relevant to fiduciary responsibilities of estate management or of fiduciary responsibilities of the person for at least one of the subject topics as specified in subdivision (e), that address the areas of proficiency, competency, and performance of a fiduciary, and impart knowledge and increase understanding of the fiduciary profession or of the California judiciary or the legal process as it relates to the administration of fiduciary responsibilities are eligible education courses.

(c) An approved education course may be offered in a real-time classroom setting, delivered by video presentation from a remote location or by other delivery means, including online.

(d) An approved education course may include independent study, subject to the limitations of paragraph (4) of subdivision (a) of Section 4442, if the education provider supplies evidence of completion. A course is not independent study if the education provider requires evidence of comprehension prior to issuing a certificate of completion, as required in subdivision (c) of Section 4448.

(e) Subject topics for eligible education courses, as defined in subdivision (b), include the following:

- (1) Conservatorship;
- (2) Guardianship;
- (3) Trust administration;
- (4) Durable Power of Attorney;
- (5) The California court system including court jurisdiction and responsibilities; the state and federal constitution, California statutes, rules of court, case law, administrative law, and current issues in the California court system relevant to the fiduciary profession;
- (6) Ethics for fiduciaries.

Note: Authority cited: Section 6517, Business and Professions Code. Reference: Section 6538, Business and Professions Code.

§ 4446. Approved Education Providers.

(a) Approved education providers may include accredited educational institutions, professional associations, professional continuing education entities, public or private for-profit or not-for-profit entities, and court-connected groups. An "accredited educational institution" is a college or university, including a community or junior college, accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation.

(b) The following educational entities that offer or approve eligible education courses as defined in subdivision (a) of Section 4444, in accordance with the requirements of Section 4448, are approved education providers of courses that meet the prelicensing and continuing education requirements of this Article:

- (1) An accredited educational institution;
- (2) An education provider offering courses sponsored by a local court of the State of California;
- (3) An education provider offering courses approved by the California State Bar for continuing education;
- (4) An accountancy organization or an education provider, if the education qualifies with the California State Board of Accountancy for continuing education credit for renewal of an individual license as a Certified Public Accountant;
- (5) An education provider offering courses registered with the Certified Financial Planner Board of Standards, Inc.;
- (6) An education provider offering courses approved by the California Department of Insurance.
- (7) An education provider of continuing education courses approved by the California Board of Registered Nursing;
- (8) An education provider offering courses approved by the California Board of Psychology.
- (9) An education provider offering courses approved by the California Board of Behavioral Sciences;
- (10) The California Department of Mental Health, Social Services and Developmental Services;

- (11) The Professional Fiduciary Association of California;
- (12) The California State Association of Public Administrators, Public Guardians, and Public Conservators;
- (13) The National Guardianship Association and its state affiliates;
- (14) The National Association of Professional Geriatric Care Managers;
- (15) The American Bar Association;
- (16) The American Society of Aging;
- (17) The Gerontological Society of America;
- (18) The National Association of Social Workers;
- (19) The National College of Probate Judges;
- (20) The National Elder Law Foundation;
- (21) The American Bankers Association and its training providers; and,
- (22) The Cannon Financial Institute.

Note: Authority cited: Section 6517, Business and Professions Code. Reference: Section 6538, Business and Professions Code.

§ 4448. Requirements for Education Providers.

Each education provider shall:

- (a) Ensure that the instructors teaching qualified education courses are proficient and knowledgeable in the subject matter;
- (b) Monitor and evaluate the quality of courses, curricula, instructors, and instructor training;
- (c) Maintain records of attendance or independent study and distribute to each participant a certificate of completion that identifies the education provider and documents the subject taught, the date of completion of the education course, and the amount of education credit offered;
- (d) Maintain documentation of approved education courses offered for prelicensing and continuing education credit under this article for a period of at least five years from the date the education course was offered; and
- (e) Provide to the Bureau upon request any documentation of approved education courses for prelicensing and continuing education credit, including records of attendance or independent study.

Note: Authority cited: Section 6517, Business and Professions Code. Reference: Section 6538, Business and Professions Code.

§ 4450. Proof of Compliance of Prelicensing Education.

Each applicant is responsible for ensuring compliance with the prelicensing education requirements of this Article.

- (a) To demonstrate compliance an applicant shall sign under penalty of perjury on an application form, as provided for in Section 4422, provided by the Bureau that they have completed thirty (30) hours of approved prelicensing education courses.
- (b) An applicant shall maintain documentation of completion of prelicensing education courses for a period of at least three years from the date of the issuance of the license.
- (c) Each applicant shall provide any information requested by the Bureau within ten (10)

business days of the request, to determine compliance with the prelicensing education requirements of the Act.

Note: Authority cited: Section 6517, Business and Professions Code. Reference: Section 6538, Business and Professions Code.

§ 4452. Proof of Compliance of Continuing Education Requirements.

Each applicant is responsible for ensuring compliance with the continuing education requirements of this Article.

(a) To demonstrate compliance a licensee shall sign under penalty of perjury on an annual renewal application form provided by the Bureau that they have completed fifteen (15) hours of approved continuing education courses.

(b) A licensee shall maintain documentation of completion of continuing education courses for a period of at least three years from the date of renewal.

(c) Each licensee shall provide any information requested by the Bureau within ten (10) business days of the request, to determine compliance with the continuing education requirements for license renewal.

Note: Authority cited: Section 6517, Business and Professions Code. Reference: Section 6538, Business and Professions Code.

Article 4- Code of Ethics

§ 4470. General Principles.

(a) A licensee's fiduciary duties recognized under this Article are based upon the fiduciary relationship established with the consumer as follows:

(1) A licensee's relationship to a conservatee when acting as a court appointed conservator;

(2) A licensee's relationship to a ward when acting as a court appointed guardian;

(3) A licensee's relationship to a principal when acting under a durable power of attorney; and,

(4) A licensee's relationship to a beneficiary when acting as a trustee.

(b) The licensee shall comply with all local, state, and federal laws and regulations developed by the courts and the Judicial Council as a minimum guide for the fulfillment of the fiduciary duties recognized under this Article.

(c) The licensee shall protect all rights of the consumer that relate to licensee's fiduciary duties to the consumer.

(d) The licensee shall refrain from representing the consumer in areas outside the scope of legal authority.

(e) The licensee shall seek competent professional advice whenever appropriate for the benefit of the consumer.

Note: Authority cited: Sections 6517 and 6520, Business and Professions Code. Reference: Section 6520, Business and Professions Code.

§ 4472. Decision Standards.

- (a) The provisions under this section apply to those licensed fiduciaries acting in the capacity of a conservator, guardian, or agent under durable power of attorney for health care or for finances.
- (b) The licensee shall provide the consumer with every reasonable opportunity to exercise those individual choices that the consumer is capable of exercising.
- (c) When the licensee is making decisions on behalf of the consumer, the licensee shall use every reasonable good faith effort to ascertain the desires of the consumer prior to making any decisions, and shall make decisions therefore predicated on the ascertained desires of the consumer, unless doing so would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expense on the estate.
- (d) If after every reasonable good faith effort the desires of the consumer cannot be ascertained or if exercising them would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expense on the estate, the licensee shall make decisions that are in the best interest of the consumer.
- (e) Decisions made on behalf of the consumer shall take into consideration all known ethnic, religious, social and cultural values of the consumer whenever possible.

Note: Authority cited: Sections 6517 and 6520, Business and Professions Code. Reference: Section 6520, Business and Professions Code.

§ 4474. Confidentiality.

- (a) The licensee shall closely guard against the disclosure of personal information regarding the consumer except when such disclosure is required by law or necessary to protect the best interest of the consumer.
- (b) Disclosure of consumer information shall be limited to what is lawful, necessary and relevant to the issue being addressed.

Note: Authority cited: Sections 6517 and 6520, Business and Professions Code. Reference: Section 6520, Business and Professions Code.

§ 4476. Conflict of Interest.

- (a) The licensee shall avoid actual conflicts of interest, and consistent with the licensee's fiduciary duties, shall not engage in any activity where there is the reasonable appearance of a conflict of interest.
- (b) The licensee shall not engage in any personal, business, or professional interest or relationship that is or reasonably could be perceived as self-serving or adverse to the best interest of the consumer.
- (c) The licensee shall protect the rights of the consumer and the estate against infringement by third parties.

Note: Authority cited: Sections 6517 and 6520, Business and Professions Code. Reference: Section 6520, Business and Professions Code.

§ 4478. Residential Placement.

- (a) The provisions under this section apply to those licensed fiduciaries acting in the capacity of a conservator, guardian, or agent under durable power of attorney for health care.
- (b) The licensee shall be informed and aware, and consider the options and alternatives available when establishing the consumer's place of residence.
- (c) The licensee shall use every reasonable good faith effort to ascertain the desires of the consumer prior to making any decisions when establishing the consumer's residence, unless doing so would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expense on the estate.
- (d) If after every reasonable good faith effort the desires of the consumer cannot be ascertained or if exercising them would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expense on the estate, the licensee shall select the least restrictive and appropriate residence that is available and necessary to meet the needs of the consumer that are in the best interest of the consumer.
- (e) The licensee shall not remove the consumer from his or her home or separate the consumer from family and friends unless such removal is appropriate and in the best interest of the consumer.
- (f) The licensee shall seek professional evaluations and assessments whenever appropriate to determine whether the current or proposed placement of the consumer represents the least restrictive and appropriate residence that is available and necessary to meet the needs of the consumer that are in the best interest of the consumer.
- (g) The licensee shall monitor the placement of the consumer on an on-going basis to ensure its continued appropriateness, and shall make changes whenever necessary that are in the best interest of the consumer.
- (h) The licensee shall take all action necessary to protect the consumer from financial and/or physical harm or abuse.

Note: Authority cited: Sections 6517 and 6520, Business and Professions Code. Reference: Section 6520, Business and Professions Code.

§ 4480. Care, Treatment and Services.

- (a) The provisions under this section apply to those licensed fiduciaries acting in the capacity of a conservator, guardian, or agent under durable power of attorney for health care.
- (b) The licensee shall protect the personal and pecuniary interests of the consumer.
- (c) The licensee shall use every reasonable good faith effort to ascertain the desires of the consumer prior to making any decisions regarding all care, treatment, or services, unless doing so would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expense on the estate.
- (d) If after every reasonable good faith effort the desires of the consumer cannot be ascertained or if exercising them would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expense on the estate, the licensee shall make decisions regarding care, treatment, and services that are in the best interest of the consumer.
- (e) The licensee shall be cognizant of his or her own limitations of knowledge, and shall seek professional evaluations and assessments whenever appropriate to determine whether the current

or proposed care, treatment, and services are appropriate and in the best interest of the consumer.
(f) The licensee shall monitor the care, treatment, and services on an on-going basis to ensure its continued appropriateness, and shall make changes whenever necessary that are in the best interest of the consumer.

Note: Authority cited: Sections 6517 and 6520, Business and Professions Code. Reference: Section 6520, Business and Professions Code.

§ 4482. Management of the Estate.

- (a) The licensee shall protect the assets of the estate.
- (b) The licensee shall pursue claims against others when it reasonably appears to be in the best interest of the consumer or the estate to do so.
- (c) The licensee shall defend against actions or claims against the estate when it reasonably appears to be in the best interest of the consumer or the estate to do so.
- (d) The licensee may incur expenses that are appropriate to the estate, in relation to the assets, overall investment strategy, purpose, and other relevant information and circumstances when investing and managing estate assets.
- (e) Consistent with the licensee's fiduciary duties, the licensee shall manage the assets of the estate in the best interest of the consumer.
- (f) The licensee shall manage the estate with prudence, care and judgment, maintaining detailed fiduciary records as required by law.

Note: Authority cited: Sections 6517 and 6520, Business and Professions Code. Reference: Section 6520, Business and Professions Code.

§ 4484. Limitation or Elimination of Fiduciary Powers; Restoration of Capacity; Termination of Fiduciary Relationship.

- (a) When appropriate and in the best interest of the conservatee, licensed conservators under the Act shall not oppose and, in appropriate circumstances shall seek, limitations on the licensee's powers or authority to act, elimination of unnecessary or no-longer necessary powers, or termination of the proceeding and restoration of the conservatee's legal capacity.
- (b) In all fiduciary relationships subject to the Act, when appropriate and in the best interest of the consumer, the licensee shall take all reasonable steps to facilitate termination of the fiduciary relationship.
- (c) In all fiduciary relationships subject to the Act, the licensee shall not oppose or interfere with efforts to terminate the licensee's fiduciary relationship with a consumer for any reason other than as necessary or appropriate to protect or promote the best interest of that consumer.

Note: Authority cited: Sections 6517 and 6520, Business and Professions Code. Reference: Section 6520, Business and Professions Code.

Article 5- Examination

§ 4500. Examination.

- (a) Once an applicant is deemed eligible to take the licensing examination, the applicant has twelve (12) months in which to achieve a passing score. If an applicant initially fails to pass the examination the applicant may sit for re-examination a maximum of four times within the twelve (12) month eligibility period not to exceed one re-examination attempt every 30 days.
- (b) The licensing examination shall include a portion that is specific to California law.

Note: Authority cited: Sections 6517 and 6539, Business and Professions Code. Reference: Sections 6518, 6533 and 6539, Business and Professions Code.

Article 6- License Denial

§ 4520. Substantially Related Criteria for Denial of License.

For purposes of denial of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a professional fiduciary if to a substantial degree it demonstrates present or potential unfitness of a person holding a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to fiscal dishonesty or breach of fiduciary responsibilities of any kind.

Note: Authority cited: Sections 481 and 6517, Business and Professions Code. Reference: Sections 481, 6536 and 6537, Business and Professions Code.

§ 4522. Rehabilitation Criteria for Denial of License.

When considering the denial of a license under Section 480 or 6536 of the Business and Professions Code, the Bureau, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license, shall consider the following criteria:

- (a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered grounds for denial under Sections 480 and 6536.
- (c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (a) or (b).
- (d) The extent to which the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.
- (e) Evidence, if any, of rehabilitation submitted by the applicant.

Note: Authority cited: Sections 482 and 6517, Business and Professions Code. Reference: Sections 482, 6536 and 6537, Business and Professions Code.

Article 7- Reporting Duties of Licensees

§ 4540. Annual Reporting Requirements of Licensee.

- (a) A licensee is required to file an annual statement that complies with the requirements of Section 4542, within sixty (60) days from the date of issuance of a license as a professional fiduciary. A licensee may be subject to cite or fine or disciplinary action for failure to comply with this subdivision.
- (b) A licensee is required to file an annual statement that complies with the requirements of Section 4542 no later than sixty (60) days prior to the expiration of the license. A licensee may be subject to cite or fine or disciplinary action for failure to comply with this subdivision.
- (c) If an annual statement is filed electronically, the licensee shall fill out the form completely and print and mail in a signed copy within five business days of the electronic filing. The signed copy must be received by the Bureau within the timeframes established in subdivisions (a) and (b) for compliance.

Note: Authority cited: Section 6517, Business and Professions Code. Reference: Sections 6534 and 6561, Business and Professions Code.

§ 4542. Annual Statement.

- (a) As provided for in the Act, each annual statement shall include the following information:
 - (1) Current addresses and telephone and facsimile numbers for licensee's place of business and place of residence.
 - (2) The licensee's designated address of record for public information.
 - (3) A list of any other license or professional certificate held by licensee, including information regarding the type, state/county, license or certificate number, date issued, status, and whether the license or certificate has been subject to disciplinary action, including revocation or suspension. The licensee may attach a statement of explanation.
 - (4) The case name, type of case, date of appointment, court location, and case number for all matters where the licensee has ever been appointed by the court to serve as a fiduciary.
 - (5) The names of the licensee's current conservatees and wards, and the respective case names, court locations, and case numbers; and the names and dates of beginning services for all trusts and estates currently administered by the licensee, and if applicable, the respective case names, court locations, and case numbers for the trusts and estates currently administered by the licensee.
 - (6) The aggregate dollar value of all assets currently under the licensee's supervision as a professional fiduciary.
 - (7) The case names, court locations, and case numbers of all conservatorships and guardianships that are closed, and the dates of closure, for which the licensee served as the conservator or guardian; and the names of all trusts or other estates that are closed for which the licensee served as the trustee or personal representative and the dates of closure, and if applicable, the case names and case numbers for the trusts or other estates that are closed for which the licensee served as the trustee or personal representative.
 - (8) Whether the licensee or a family member of the licensee holds any ownership or beneficial interests in any businesses or other enterprises that have received payment from a client of the licensee, including the names of the applicable businesses or other enterprises, the names of the respective clients, and the dates of any payments received.

- (9) The names of any persons or entities that have an interest in the licensee's professional fiduciary business.
- (10) Whether the licensee has filed for bankruptcy or held a controlling financial interest in a business when that business filed for bankruptcy in the last ten (10) years and the date of the bankruptcy filing. The licensee may attach a statement of explanation.
- (11) Whether the licensee has been convicted of a crime. The licensee may attach a statement of explanation.
- (12) Whether the licensee has been found by a court to have breached a fiduciary duty, the date, case name, court location, and case number associated with each breach of fiduciary duty. The licensee shall submit a record of the court findings and orders related to each specific case. The licensee may file an additional statement of the issues and facts pertaining to each case.
- (13) Whether the licensee has been removed as a fiduciary by a court for breach of trust, the date, case name, court location, and case number associated with each removal. Whether all related appeals have been taken or the time to file an appeal has expired. The licensee shall submit a record of the court findings and orders related to each specific case. The licensee may file an additional statement of the issues and facts pertaining to each case.
- (14) Whether the licensee has resigned as a fiduciary in a matter in which a complaint has been filed with the court, the date the complaint was filed, the date of resignation, the case name, court location, and case number associated with each resignation, and a statement of the issues and facts pertaining to each allegation. The licensee shall submit a record of the court findings and orders related to each specific case.
- (15) Whether the licensee has settled as a fiduciary in a matter in which a complaint has been filed with the court, the date the complaint was filed, the date of the settlement, the case name, court location, and case number associated with each settlement, and a statement of the issues and facts pertaining to each allegation. The licensee shall submit a record of the court findings and orders related to each specific case.
- (b) Unless otherwise indicated, each annual statement filed with the Bureau shall report updated information reflecting any changes from the date of reporting the information on the application for licensure as a professional fiduciary or from the date of signing the last report as required by law, whichever is applicable, to the present.
- (c) As used in this section "complaint" means a civil complaint, a petition, motion, objection, or other pleading filed with the court against the licensee alleging the licensee has not properly performed the duties of a fiduciary.

Note: Authority cited: Section 6517, Business and Professions Code. Reference: Sections 141, 480, 481, 490, 6534, 6536, 6560 and 6561, Business and Professions Code.

Article 8- Renewal of License

§ 4560. Renewal.

- (a) A license may be renewed for a period of twelve (12) months.
- (b) For license renewal, a licensee shall have met the annual reporting requirements of subdivision (b) of Section 4540, show proof of compliance with the continuing education requirements of Section 4442, and submit the renewal fee as required in Section 4580.
- (c) For the first license renewal following the initial license period as provided in Section 4428,

each licensee shall comply with the continued education requirements of Section 4442.

Note: Authority cited: Sections 152.6 and 6517, Business and Professions Code. Reference: Sections 152.6, 6538, 6541, 6561 and 6592, Business and Professions Code.

§ 4562. Delinquency.

(a) Except as otherwise provided by law, a license which has expired may be renewed upon the filing of an application for renewal and payment of the renewal fee.

(b) If a license is renewed more than thirty (30) days after its expiration, the licensee, as a condition prior to renewal, shall also pay the late delinquency fee required in Section 4580.

Note: Authority cited: Section 6592, Business and Professions Code. Reference: Sections 163.5, 6541 and 6592, Business and Professions Code.

Article 9- Fees

§ 4580. Fees.

The following fees are established:

- (a) The application fee for a professional fiduciary license shall be four hundred dollars (\$400).
- (b) The initial license fee shall be six hundred dollars (\$600) for the first twelve (12) months plus a prorated amount of the renewal fee required in subdivision (c) to adjust the duration of the initial license period to set the renewal date for each licensee as provided in Section 4428.
- (c) The renewal fee for a license shall be seven hundred dollars (\$700).
- (d) The delinquency fee for a license shall be one hundred and fifty dollars (\$150).
- (e) The fee for a duplicate or replacement license shall be twenty-five dollars (\$25).

Note: Authority cited: Sections 6517 and 6592, Business and Professions Code. Reference: Sections 122, 134, 152.6, 163.5, 6533, 6541 and 6592, Business and Professions Code.

Memorandum

CBA Agenda Item V.
February 24, 2011

To : CBA Members

Date : February 11, 2011

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From : Matthew Stanley
Legislation/Regulation Analyst

Subject : Discussion Regarding the Possible Consolidation of the CBA and the PFB

There are numerous factors that might influence California Board of Accountancy (CBA) members' perspectives and opinion when considering the broad implications of consolidating the Professional Fiduciaries Board (PFB) with the California Board of Accountancy (CBA). Many of these matters are based on factual information, while others are more policy-centered in nature.

There are four groups of interested parties that should be kept in mind as perspectives on the following issues may well vary from group to group. There are consumers of public accounting services, consumers of professional fiduciary services, CBA licensees, and PFB licensees. Current CBA statutes require that the CBA consider the protection of consumers of public accounting services above all else. However, should the merger occur, the protection of consumers of fiduciary services would be equally important to the CBA.

CBA staff have attempted to present an unbiased perspective, amongst these four groups, on each of the following topics with an eye toward consumer protection as the main concern.

Public Protection

One of the principal roles of the State of California is to protect its populace. This is evidenced in that the principal purpose supporting the existence of all California regulatory agencies is to protect California consumers. Much like the CBA protects consumers of public accounting services, the PFB protects consumers of fiduciary services. It is questionable whether the PFB's current organization framework, expenditure authority and revenue stream allows for the level of public protection that is due to California consumers.

Governor's Office Perspective

Throughout his first several weeks in office, it has been very clear that Governor Brown is taking cost savings seriously. His proposed budget, cell phone reduction, and state vehicle reduction are all tangible proof of his commitment. He has also

spoken of his desire to streamline, consolidate and make government more efficient. With this philosophy, and the current budget situation, it is very possible, and perhaps even probable, that Governor Brown would support this proposed merger. However, his office has not yet stated a position.

Department of Consumer Affairs' Position

As reflected in the PFB Sunset Review Report the Department of Consumer Affairs (DCA) has stated its position with respect to PFB activities as follows:

"The number one priority of the Bureau (PFB) is to protect California consumer from fraud and abuse. Despite the current challenges facing the Bureau (PFB), the Department (DCA) believes that are significant opportunities for growth and operations improvements to transform the Bureau (PFB) into a program that improves consumer protection."

Also relevant to the DCA's position is the statement in the PFB Sunset Review Report which reads on page 22:

"In an effort to support the suggestions made in this document, the Bureau (PFB) would like to request that the next sunset review be established three (3) years from now. This should provide sufficient time to demonstrate the continued increase in the number of licensees, the sustainability of the Bureau's (PFB) budget and the value of the consumer protection that is provided."

It should be noted that during legislative hearings on the prior consolidation proposal, DCA provided the Legislature with responses to Senate questions that included a statement (**Attachment 1**) that the consolidation of PFB with the CBA would save \$116,000.

Current PFB Organization; Staff Positions & Revenues

When the PFB was created, it was estimated that approximately 1,300 individuals would apply for licensure. That licensee count, unfortunately, appears to have been significantly over-estimated. Currently, there are approximately 450 California Professional Fiduciary licensees (PF) licensed as of the end of fiscal year (FY) 2009-10 – a full **three** years after the program was implemented. The initial licensee population projection resulted in an allocation of four positions to staff the program, a staffing level that was later determined not supportable by program revenues. The initial allocation of four positions was reduced to 1.7 as it became clear program revenues would not meet estimates. Consequently, the PFB is presently staffed at a level that appears insufficient to support a fully developed program and, further, does not have sufficient revenues to expand staffing levels to fully develop the fiduciaries program.

According to the PFB 2010 Sunset Review Report, given the anticipated stability of revenues generated from licensing fees after FY 2010-11, it is anticipated that total revenues will remain steady for at least the foreseeable future.

Current PFB Organization; Enforcement

The lack of resources has largely curtailed enforcement efforts. The majority of staff time is spent on licensing and administration.

It is a PFB goal, as cited under Goal 2 in the PFB Sunset Review Report, to establish a citation and fine program. It is perceived that development of a citation and fine and discipline program will be a very time-intensive staff effort.

Consolidation; Organizational Structure

It could be proposed to create within the CBA a Professional Fiduciaries Committee (PFC), much like the three other CBA Statutory Committees. The PFC would then report to the CBA on issues that impact the fiduciary profession. By creating the PFC, California would retain oversight of the fiduciary profession, while transferring administrative oversight to the CBA.

Consolidation; Accountancy Fund

The co-mingling of revenues would allow a full merger of resources allowing the CBA to utilize existing resources in its mission to protect consumers of accounting and fiduciary services.

However, co-mingling the funds may create statutory uncertainty (which could be addressed through any bill that merges the CBA and PFB) as current CBA law requires the CBA to set renewal fees of CPAs at a level to maintain a 9-month reserve. In addition, there may be concern from CPAs that their licensing fees are supplementing the regulation of another profession.

Consolidation; Staffing, Expenditure Authority & Revenue Implications

It is not known how many staff the CBA might receive in conjunction with consolidating the PFB with the CBA. However, the impact on consumers and licensees varies depending on the number of staff received and whether or not the Accountancy Fund and Fiduciary Fund are co-mingled. Below are a number of scenarios that might possibly occur.

1. CBA receives no staff and funds are not co-mingled:
CBA staff would be required to absorb the workload with existing PYs. A small number of staff would be assigned to handle the new workload and would be paid from the Fiduciary Fund. This results in a non-homogenous staff.
2. CBA receives no staff and funds are co-mingled:

CBA staff would be required to absorb the workload with existing PYs. No budgetary issues would arise as expenditure authority already exists in CBA to pay for existing staff. This would likely result in an increase to the Accountancy Fund Reserve as more revenue (from PF licensing) would come into the fund with no corresponding increase in costs. This results in a homogenous staff.

3. CBA receives current staffing levels (1.7 PYs) and funds are not co-mingled:
The present level of PFB staff is largely sufficient to address administrative and licensing workload associated with the program. However, additional fiduciary program development in licensure and enforcement functions would need to be addressed by existing CBA staff paid for with Accountancy Fund monies. However, according to the PFB 2010 Sunset Review Report, approximately 38.7% of the PFB budget is expended on administrative costs. Transferring administrative oversight to the CBA might allow for some “economies of scale” related to administration functions and allow PFB staff to re-direct some efforts to enforcement activities. This results in a non-homogenous staff.
4. CBA receives current staffing levels (1.7 PYs) and funds are co-mingled:
CBA staff along with the new positions could assume all duties of the PFB with only some impact on current services to CBA stakeholders as existing CBA staff would assume some enforcement and administrative duties as outlined above. This results in a homogenous staff.
5. CBA receives enhanced staffing levels (4PYs) and funds are not co-mingled:
CBA staff would continue to operate as normal with some transfer of administrative duties as noted above. The new positions would be sufficient to run an effective fiduciary program. However, the budgeting issues the current PFB faces would remain. The current revenues could not support four positions, and the Accountancy Fund would eventually supplement the Fiduciary Fund. This results in a non-homogenous staff.
6. CBA receives enhanced staffing levels (4 PYs) and funds are co-mingled:
CBA staff along with the new positions could assume all duties of the PFB with only minimal impact on current services to CBA stakeholders as there would be less need for existing CBA staff would assume enforcement and administrative duties as outlined above. This results in a homogenous staff.

It should be noted that additional staffing cannot be requested until after the merger bill (which would contain fund co-mingling information) has been signed.

Consolidation; Public Perception

The public clearly is aware of the differences between a CPA and a PF. The existing separation between the CBA and the PFB currently makes sense to the

average consumer. Consolidation of the PFB with the CBA could lead to a degree of confusion on the part of the consumer as well as licensees, as lines are possibly blurred between two unique license types.

Attachment

Department of Consumer Affairs

DCA Responses to Senate

June 8, 2009

Q#1: Are any General Fund monies used in the Department of Consumer Affairs including any of its component boards, bureaus, programs or commission? If so, please identify the amount appropriated over each of the last two fiscal years, and projected for each of the next three fiscal years, and show what program components that the GF monies support.

Currently, DCA does not have any general funded programs in its purview. The California Office of Privacy Protection (COPP) was the last DCA program supported by the General Fund (GF). Chapter 183/07 (SB 90) moved the COPP to the State and Consumer Services Agency effective January 1, 2008. The COPP was appropriated under DCA as follows:

FY 06-07 \$863 (\$828 GF + \$35 DCA special funds)
FY 07-08 \$433 (\$398 GF + \$35 DCA special funds) - half yr funding due to transfer effective January 1, 2008

Q#2: The projected budgetary impact (savings or expenditures) of the following proposals projected over each of the next three fiscal years. Please indicate whether the savings or expenditures are to the General Fund or to Special Funds. Also indicate the projected source of the savings or expenditures (e.g., reduced staffing, consolidated office space, merged enforcement staff, etc.)

ELIMINATION PROPOSALS

- Special fund savings.
- Assumes fund reserves will transfer to the GF per Government Code Section 16346.
- Eliminations effective July 1, 2010. Depending on the effective date of TBL language associated with the eliminations there may be some modest savings in FY 2009-10.
- FY 09-10 assumes 25% savings achieved during the year as the program sunsets on June 30, 2010.
- FY 2011-12 estimated savings recorded as zero; no additional savings identified.

#	Program, Recommended Action, and Assumptions	Budget Year FY 2009-10	Positions Budgeted State Staff positions FY 2009-10	Estimated Savings	Estimated Savings FY 2009-10	Estimated Savings FY 2010-11	Estimated Savings FY 2011-12	Position Eliminations effective July 1, 2010		Estimated Fund Reserve on June 30, 2010 to transfer to GF
								State Staff positions	Board / Comm Members	
1	Eliminate Court Reporters Board -Assumes entire budgets from both Support and Transcript Reimbursements and positions eliminated effective July 1, 2010 and fund balances transferred to GF effective June 30, 2010. Assumes 25% savings in FY 2009-10 due to closing of program effective July 1, 2010.	\$ 1,218	4.5							\$ 1,941
2	Eliminate Inspection and Maintenance Review Committee (continued oversight by DCA BAR) -Assumes entire budget and position eliminated from the BAR-VIRF budget effective July 1, 2010 and no change to fund (budget paid against BAR-VIRF fund). Assumes 25% savings in FY 2009-10 due to closing of program effective July 1, 2010.	\$ 155	1.0	\$ 305	\$ 1,218	\$ -		4.5	5.0	
3	Eliminate Bureau of Naturopathic Medicine -Assumes entire budget and position eliminated effective July 1, 2010 and fund balance transferred to GF effective July 1, 2010. Assumes 25% savings in FY 2009-10 due to closing of program effective July 1, 2010.	\$ 133	1.0	\$ 39	\$ 155	\$ -		1.0	13.0	
4	Eliminate Telephone Medical Advice Services Bureau (TMAS) -Assumes entire budget and position eliminated effective July 1, 2010 and fund balance transferred to GF effective June 30, 2010. Assumes 25% savings in FY 2009-10 due to closing of program effective July 1, 2010.	\$ 157	1.0	\$ 33	\$ 133	\$ -		1.0	9.0	
TOTAL Reserve Balance Transfer to General Fund										
				\$ 416	\$ 1,563	\$ -		7.5	27.0	\$ 2,508

CONSOLIDATION PROPOSALS

- Special fund savings only.
- All program budgets and funds continue to remain distinct and separate entities.
- Assume no consolidated offices due to one-time move/configuration costs.
- Consolidations effective July 1, 2010. Depending on the effective date of TBL language associated with the consolidations there may be some modest savings in FY 2009-10.
- FY 2011-12 estimated savings recorded as zero; no additional savings identified.

#	Program, Recommended Action, and Assumptions	Budget Year FY 2009-10	Positions Budgeted State Staff positions FY 2009-10	Estimated Savings	Estimated Savings	Estimated Savings	Position Eliminations effective July 1, 2010 Board / Comm Members	Comments
5	Eliminate Landscape Architects Technical Committee (LATC) - Assumes Committee is abolished and functions retained by the California Architects Board. - Eliminate all Committee member per diem and travel - Eliminate 1.5 positions (salary and benefits) - Misc Admin OEE savings Estimated annual savings	\$ 1,122	5.5					
				\$ 11 \$			5.0	
				\$ 122 \$		1.5		
				\$ 29 \$				
				\$ - \$	162 \$	1.5	5.0	
6	Consolidate Board of Geologists with the State Mining and Geology Board - Eliminate Board Members (per diem and travel) - Eliminate Board EO position (salary and benefits) - Eliminate 2.0 positions (salary and benefits) - Misc Admin OEE savings - Assumes continuation of exams and enforcement activities - Assumes no change in rent costs since still have to pay for a location - No change in fee structure needed since ongoing revised budget at \$1.15 mil (\$1,429 minus \$,277 savings) and revenue intake at \$1.2 mil annually. Estimated annual savings	\$ 1,429	10.2					
				\$ 14 \$			7.0	
				\$ 135 \$		1.0		
				\$ 100 \$		2.0		
				\$ 28 \$				
				\$ - \$	277 \$	3.0	7.0	
7	Consolidate Prof. Fiduciaries Bureau into the Board of Accountancy - Eliminate Committee Members (travel only - no per diem paid) - Eliminate Bureau Chief position (salary and benefits) - Misc Admin OEE savings - No other savings identified. Budget reduced significantly in order to pay back BAR the starter loan. Remaining budget includes minimal amounts for license processing and 13k for rent. Contains \$0 budgeted for enforcement. - Assume no change in Accountancy Board meeting activities (room rental and travel). Will discuss both professions at meetings. - Fee structure to be evaluated on smaller appropriation, fewer licensees than anticipated, and repayment of \$215,000 Control Section 14.00 special fund loan. Estimated annual savings	\$ 386	2.0					
				\$ 4 \$			7.0	
				\$ 102 \$		1.0		
				\$ 10 \$				
				\$ - \$	116 \$	1.0	7.0	

#	Program, Recommended Action, and Assumptions	Budget Year FY 2009-10	Positions Budgeted State Staff positions FY 2009-10	Estimated Savings FY 2009-10	Estimated Savings FY 2010-11	Estimated Savings FY 2011-12	Position Eliminations effective July 1, 2010		Comments
							State Staff positions	Board / Comm Members	
8	Program, Recommended Action, and Assumptions								
	Consolidate Psychiatric Technicians (PT) Program, Board of Psychology, and the Board of Behavioral Sciences (BBS) into a new Board of Mental Health								
	-Eliminate the Psychiatric Technician's Program	\$ 2,340	11.5		\$ 2,340		11.5	-	
	-Eliminate the Board of Psychology	\$ 3,551	14.5		\$ 3,551		14.5	9.0	
	-Eliminate the Board of Behavioral Sciences	\$ 7,290	41.1		\$ 7,290		41.1	11.0	
	Reductions								
		\$		\$	\$ 13,181		67.1	20.0	
	Create the Board of Mental Health								
	-Assumes transfer of all resources from the Psychiatric Technicians Program, the Board of Psychology, and the Board of Behavioral Science	\$ 13,181	67.1						These are 9 board member positions added back for a net reduction of 11 board/committee members'
	Assumes permanent elimination of 6.0 positions (salary and benefits) and their miscellaneous OE&E.		(6.0)		\$ 651		6.0		
9	Consolidate Hearing Aid Dispensers (HAD) Bureau within the Speech-Language Pathology and Audiology Board								
	-Eliminate Board Members (per diem and travel)	\$ 9							
	-Eliminate 1.0 position (salary and benefits)	\$ 12,539	61.1		\$ 642		6.0	9.0	
	-Misc Admin OE&E savings							11.0	
	Assumes continuation of all exams and enforcement activities. Assume no change in Speech Board meeting activities (room rental and travel). Will discuss both professions at same meetings.	\$ 1,041	4.0						
10	Consolidate Licensed Vocational Nursing (VN) Program and the Board of Registered Nursing into a new Board of Registered and Vocational Nurses								
	-Eliminate the VN Program	\$ 9,660	53.0		\$ 9,660		53.0	11.0	
	-Eliminate the Board of Registered Nursing	\$ 25,108	111.7		\$ 25,108		111.7	9.0	
	Reductions								
		\$		\$	\$ 34,768		164.7	20.0	
	Create the Board of Registered and Vocational Nurses								
	-Assumes transfer of all resources from the Vocational Nursing Program and the Board of Registered Nursing	\$ 34,768	164.7						These are 9 board member positions added back for a net reduction of 11 board/committee members'
	Assumes permanent elimination of 5.0 positions (salary and benefits) and their miscellaneous OE&E.		(5.0)		\$ 628		5.0		
	-Establish 9.0 Board Members (travel and per diem)	\$ 9							
	New Board of Registered and Vocational Nurses	\$ 34,149	159.7		\$ 619		5.0	11.0	
	Estimated annual savings								
				\$	\$ 1,892		17.5	48.0	
	TOTAL Consolidations, \$ and Positions			\$	\$ 416		25.0	75.0	
	TOTAL ELIMINATIONS AND CONSOLIDATIONS - AND POSITIONS			\$	\$ 3,551				

Memorandum

CBA Agenda Item VI.
February 24, 2011

To : CBA Members

Date : February 8, 2011

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From : Matthew Stanley
Legislation/Regulation Analyst

Subject : Discussion of Possible Legislative Language Regarding the PFB

In 2009, the former Governor proposed merging the Professional Fiduciaries Bureau (PFB) with the California Board of Accountancy (CBA). At the time there was legislative language being circulated to implement the concept; however, that language was never introduced as a bill. That language can be found in **Attachment 1**. Staff inquired of Senate Business & Professions consultant G.V. Ayers whether this language would be used should a similar proposal be put forth in 2011. Staff were told that the attached language would probably be a very good starting point. With that in mind, staff have prepared the following summary of the possible language to assist the CBA in clarifying which issues may be addressed before the Legislature.

The only change to the Accountancy Act (Business & Professions Code Sections 5000-5158) would be to add Section 5023.1 which would create the Professional Fiduciaries Technical Advisory Committee (PFC) under the jurisdiction of the CBA to advise the CBA on Professional Fiduciary matters. It further grants the CBA the duties and powers of the Professional Fiduciaries Act (Fiduciaries Act).

Another possible change to the Accountancy Act, which is not in the proposal, but could be considered, is the addition of a Professional Fiduciary licensee to the CBA membership. This possibility may or may not involve the elimination of a Certified Public Accountant seat on the CBA.

The remaining changes in the proposal are all amendments to the Fiduciaries Act (Business & Professions Code Sections 6500-6592). Throughout the Fiduciaries Act, the word bureau is changed to board, meaning the CBA, and the word Committee means the PFC.

Section 6510 is completely changed to remove the existing bureau structure from the law. It is replaced with language transferring the bureau's responsibilities to the CBA. In addition, the CBA takes over all records and existing regulations of the

Discussion of Possible Legislative Language Regarding the Professional Fiduciaries Bureau

Page 2 of 2

PFB. Further, the CBA may delegate its authority under the Fiduciaries Act to the PFC with two exceptions. Only the CBA may give final approval for adoption of regulations, and only the CBA may discipline licensees.

The duties of the PFC are outlined in amended Section 6511. The PFC shall make recommendations to the CBA regarding policies, practices, and regulations regarding Professional Fiduciaries. In addition, it shall make recommendations promoting the interests of consumers and promoting the interest of the public. Its meetings are open to the public.

The only remaining substantive change is to Sections 6590 and 6591 which essentially merge the Professional Fiduciary Fund into the Accountancy Fund.

Attachment



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Attachment 1

ADD SECTION 5023.1 TO THE ACCOUNTANCY ACT AS FOLLOWS:

5023.1. (a) There is within the jurisdiction of the board a Professional Fiduciaries Technical Advisory Committee. The Professional Fiduciaries Technical Advisory Committee shall advise the board regarding the licensing and regulation of professional fiduciaries under Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code.

(b) The board is vested with the duties, powers, purposes, responsibilities, and jurisdiction of the Professional Fiduciaries Technical Advisory Committee pursuant to the general authority of this chapter and the specific authority granted by Chapter 491 of the Statutes of 2006.

AMEND THE PROFESSIONAL FIDUCIARIES ACT AS FOLLOWS:

Article 1. General Provisions

6500. This chapter shall be known as the Professional Fiduciaries Act.

6501. As used in this chapter, the following terms have the following meanings:

- (a) "Act" means this chapter.
- ~~(b) "Bureau" means the Professional Fiduciaries Bureau within the Department of Consumer Affairs, established pursuant to Section 6510.~~
- (b) "Board" means the California Board of Accountancy.
- (c) "Client" means an individual who is served by a professional fiduciary.
- ~~(d) "Department" means the Department of Consumer Affairs.~~
- (d) "Committee" means the Professional Fiduciaries Technical Advisory Committee.
- (e) "Licensee" means a person who is licensed under this chapter as a professional fiduciary.
- (f) "Professional fiduciary" means a person who acts as a conservator or guardian for two or more persons at the same time who are not related to the professional fiduciary or to each other by blood, adoption, marriage, or registered domestic partnership. "Professional fiduciary" also means a person who acts as a trustee, agent under a durable power of attorney for health care, or agent under a durable power of attorney for finances, for more than three people or more than three families, or a combination of people and families that totals more than three, at the same time, who are not related to the professional fiduciary by blood, adoption, marriage, or registered domestic partnership. "Professional fiduciary" does not include any of the following:

(1) A trust company, as defined in Section 83 of the Probate Code.

(2) An FDIC-insured institution, or its holding companies, subsidiaries, or affiliates. For the purposes of this paragraph, "affiliate" means any entity that shares an ownership interest with, or that is under the common control of, the FDIC-insured institution.

(3) A person employed by an entity described in paragraph (1) or (2) who is acting in the course and scope of that employment.

(4) Any public officer or public agency, including the public guardian, public conservator, or other agency of the State of California or of a county of California, when that public officer or public agency is acting in the course and scope of official duties, or any regional center for persons with developmental disabilities as defined in Section 4620 of the Welfare and Institutions Code.

(5) Any person whose sole activity as a professional fiduciary is as a broker-dealer, broker-dealer agent, investment adviser, or investment adviser representative registered and regulated under the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code), the Investment Advisers Act of 1940 (15 U.S.C. Sec. 80b-1 et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.), or involves serving as a trustee to a company regulated by the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

~~—(g) "Committee" means the Professional Fiduciaries Advisory Committee, as established pursuant to Section 6511.~~

(g) "License" means a professional fiduciary's license issued pursuant to this chapter.

6502. (a) Every person who is required to register with the Statewide Registry maintained by the Department of Justice under Chapter 13 (commencing with Section 2850) of Part 4 of Division 4 of the Probate Code prior to January 1, 2007, shall be required to obtain a license as a professional fiduciary under this chapter.

(b) Every person who is required to file information with the clerk of the court under Article 4 (commencing with Section 2340) of Chapter 3 of Part 4 of Division 4 of the Probate Code prior to January 1, 2007, shall be required to obtain a license as a professional fiduciary under this chapter.

Article 2. Administration

~~6510. (a) There is within the jurisdiction of the department the Professional Fiduciaries Bureau. The bureau is under the supervision and control of the director. The duty of enforcing and administering this chapter is vested in the chief of the bureau, who is responsible to the director. Every power granted or duty imposed upon the director under this chapter may be exercised or performed in the name of the director by a deputy director or by the chief, subject to conditions and limitations as the director may prescribe.~~

~~—(b) The Governor shall appoint, subject to confirmation by the Senate, the chief~~

~~of the bureau, at a salary to be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve under the direction and supervision of the director and at the pleasure of the Governor.~~

~~—(c) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the bureau subject to the review required by Division 1.2 (commencing with Section 473).~~

~~—Notwithstanding any other provision of law, upon the repeal of this section, the responsibilities and jurisdiction of the bureau shall be transferred to the Professional Fiduciaries Advisory Committee, as provided by Section 6511.~~

6510. (a) The duties, powers, purposes, responsibilities, and jurisdiction of the Professional Fiduciaries Bureau within the Department of Consumer Affairs created in accordance with Chapter 491 of the Statutes of 2006, are hereby transferred to the California Board of Accountancy as defined in Chapter 1 (commencing with Section 5000) of Division 3.

(b) Subsequent to the transferring of authority to the board, any reference to the bureau in this Act and its regulations shall be construed as references to the board.

(c) For the performance of the duties and exercise of the powers vested in the board, the board shall have possession and control of all records, papers, offices, equipment, supplies, or other property, real or personal, held for the benefit or use by the former Professional Fiduciaries Bureau.

(d) Except as provided in subdivision (g), the board may delegate its authority under this chapter to the committee.

(e) All regulations in Division 41 (commencing with Section 4400) of Title 16 of the California Code of Regulations are continued in existence under the administration of the board.

(f) The board may direct the committee to notice and conduct hearings to adopt, amend, or repeal regulations pursuant to Section 2531.95, provided that the board itself shall take final action to adopt, amend, or repeal those regulations.

(g) The board may not delegate its authority to discipline a professional fiduciary or to take action against a person who has violated this chapter.

6511. (a) There is within the board a Professional Fiduciaries Technical Advisory Committee.

~~—(a) There is within the bureau a Professional Fiduciaries Advisory Committee. The committee shall consist of seven members; three of whom shall be licensees actively engaged as professional fiduciaries in this state, and four of whom shall be public members. One of the public members shall be a member of a nonprofit organization advocating on behalf of the elderly, and one of the public members shall be a probate court investigator.~~

~~—(b) Each member of the committee shall be appointed for a term of four years, and shall hold office until the appointment of his or her successor or until one~~

~~year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.~~

~~—(c) Vacancies shall be filled by the appointing power for the unexpired portion of the terms in which they occur. No person shall serve as a member of the committee for more than two consecutive terms.~~

~~—(d) The Governor shall appoint the member from a nonprofit organization advocating on behalf of the elderly, the probate court investigator, and the three licensees. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.~~

~~—(e) Every member of the committee shall receive per diem and expenses as provided in Sections 103 and 113.~~

(b) The committee shall do the following:

(1) Make recommendations to the board with respect to policies, practices, and regulations as may be deemed important and necessary by the board for the licensing and regulation of professional fiduciaries.

(2) Make recommendations to the board that promote the interests of consumers or that otherwise promote the welfare of the public.

(c) The committee shall hold meetings as requested by the board. All meetings of the committee shall be public meetings. Notice of each meeting of the committee shall be given in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Part 1 of Division 3 of Title 2 of the Government Code).

~~—(h) Notwithstanding any other provision of law, if the bureau becomes inoperative or is repealed in accordance with Section 6510, or by subsequent acts, the committee shall succeed to and is vested with all the duties, powers, purposes, responsibilities, and jurisdiction, not otherwise repealed or made inoperative, of the bureau and its chief. The succession of the committee to the functions of the bureau as provided in this subdivision shall establish the committee as the Professional Fiduciaries Committee in the department within the meaning of Section 22, and all references to the bureau in this code shall be considered as references to the committee.~~

~~6513. The bureau may employ, subject to civil service and other provisions of law, other employees as may be necessary to carry out the provisions of this chapter under the direction of the chief.~~

~~-~~

6514. The ~~bureau~~ board shall keep a complete record of all its proceedings and all licenses issued, renewed, or revoked, and a detailed statement of receipts and disbursements.

6515. (a) The duty of administering and enforcing this chapter is vested in the ~~bureau and the chief~~ board. In the performance of this duty, the ~~bureau and the chief board~~ shall have all of the powers of, and are subject to all of the responsibilities vested in and imposed upon the ~~board head of a department by Chapter 2 (commencing with Section 11150) of Part 1 of Division 3 of Title 2 of the Government Code.~~

(b) In the performance of the duty of administering and enforcing this chapter, the board is vested with the duties, powers, purposes, responsibilities, and jurisdiction granted by subdivision (b) of section 5023.1 of the Business and Professions Code, and the general authority granted by Chapter 1 of Division 3 (commencing with Section 5000) of the Business and Professions Code and pursuant to the specific authority granted by this chapter.

6516. Protection of the public shall be the highest priority for the bureau board in exercising its licensing, regulatory, and disciplinary functions pursuant to this chapter. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

6517. The bureau board may adopt, amend, or repeal, in accordance with the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), regulations necessary to enable the bureau board to carry into effect the provisions of law relating to this chapter.

6518. (a) The bureau board shall be responsible for administering the licensing and regulatory program established in this chapter.

(b) The bureau board shall approve classes qualifying for prelicense education, as well as classes qualifying for annual continuing education required by this chapter. The bureau board shall maintain a current list of all approved classes.

(c) The bureau board shall arrange for the preparation and administration of licensing examinations.

6520. ~~The bureau shall adopt, by regulation, a Professional Fiduciaries Code of Ethics.~~ The Professional Fiduciaries Code of Ethics shall be consistent with all statutory requirements, as well as requirements developed by the courts and the Judicial Council. The Professional Fiduciaries Code of Ethics shall be provided electronically on the bureau's board's Internet Web site and to persons who request an application for licensure. The bureau board may, by regulation, amend the Professional Fiduciaries Code of Ethics from time to time, as it deems necessary, provided that no amendment shall be effective with regard to a licensee until the licensee's next annual license renewal cycle, as specified in subdivision (a) of Section 6541, is completed. Any amendment to the Professional Fiduciaries Code of Ethics shall be included in the license renewal materials sent to a licensee.

Article 3. Licensing

6530. (a) ~~On and after January 1, 2009, no~~ No person shall act or hold himself or herself out to the public as a professional fiduciary unless that person is licensed as a professional fiduciary in accordance with the provisions of this chapter.

(b) This section does not apply to a person licensed as an attorney under the

State Bar Act (Chapter 4 (commencing with Section 6000)).

(c) This section does not apply to a person licensed as, and acting within the scope of practice of, a certified public accountant pursuant to Chapter 1 (commencing with Section 5000) of Division 3.

(d) This section does not apply to a person enrolled as an agent to practice before the Internal Revenue Service who is acting within the scope of practice pursuant to Part 10 of Title 31 of the Code of Federal Regulations.

6531. No professional fiduciary shall operate with an expired, suspended, or revoked license.

6532. A person who has been licensed by the ~~bureau~~ board may identify himself or herself as a "licensed professional fiduciary."

6533. In order to meet the qualifications for licensure as a professional fiduciary a person shall meet all of the following requirements:

(a) Be at least 21 years of age.

(b) Be a United States citizen, or be legally admitted to the United States.

(c) Have not committed any acts that are grounds for denial of a license under Section 480 or 6536.

(d) Submit fingerprint images as specified in Section 6533.5 in order to obtain criminal offender record information.

(e) Have completed the required prelicensing education described in Section 6538.

(f) Have passed the licensing examination administered by the ~~bureau~~ board pursuant to Section 6539.

(g) Have at least one of the following:

(1) A baccalaureate degree of arts or sciences from a college or university accredited by a nationally recognized accrediting body of colleges and universities or a higher level of education.

(2) An associate of arts or sciences degree from a college or university accredited by a nationally recognized accrediting body of colleges and universities, and at least three years of experience working as a professional fiduciary or working with substantive fiduciary responsibilities for a professional fiduciary, public agency, or financial institution acting as a conservator, guardian, trustee, personal representative, or agent under a power of attorney.

(3) Experience of not less than five years, prior to July 1, 2012, working as a professional fiduciary or working with substantive fiduciary responsibilities for a professional fiduciary, public agency, or financial institution acting as a conservator, guardian, trustee, personal representative, or agent under a power of attorney.

(h) Agree to adhere to the Professional Fiduciaries Code of Ethics and to all statutes and regulations.

(i) Consent to the ~~bureau~~ board conducting a credit check on the applicant.

(j) File a completed application for licensure with the ~~bureau~~ board on a form provided by the ~~bureau~~ board and signed by the applicant under penalty of

perjury.

(k) Submit with the license application a nonrefundable application fee, as specified in this chapter.

6533.5. Criminal offender record information shall be obtained on each applicant as provided in this section.

(a) Each applicant shall submit fingerprint images to the Department of Justice for the purpose of obtaining criminal offender record information regarding state and federal level convictions and arrests, including arrests where the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(b) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a fitness determination to the ~~bureau~~ board.

(c) The Department of Justice shall provide a response to the ~~bureau~~ board pursuant to subdivision (p) of Section 11105 of the Penal Code.

(d) The ~~bureau~~ board shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code.

(e) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

6534. (a) The ~~bureau~~ board shall maintain the following information in each licensee's file, shall make this information available to a court for any purpose, including the determination of the appropriateness of appointing or continuing the appointment of, or removing, the licensee as a conservator, guardian, trustee, or personal representative, and shall otherwise keep this information confidential, except as provided in subdivisions (b) and (c) of this section:

(1) The names of the licensee's current conservatees or wards and the trusts or estates currently administered by the licensee.

(2) The aggregate dollar value of all assets currently under the licensee's supervision as a professional fiduciary.

(3) The licensee's current addresses and telephone numbers for his or her place of business and place of residence.

(4) Whether the licensee has ever been removed as a fiduciary by a court for breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference, or the licensee has demonstrated a pattern of negligent conduct, including a removal prior to becoming licensed, and all appeals have been taken, or the time to file an appeal has expired.

(5) The case names, court locations, and case numbers of all conservatorship, guardianship, or trust or other estate administration cases that are closed for which the licensee served as the conservator, guardian, trustee, or personal representative.

(6) Information regarding any discipline imposed upon the licensee by the

bureau board.

(7) Whether the licensee has filed for bankruptcy or held a controlling financial interest in a business that filed for bankruptcy in the last 10 years.

(b) The bureau board shall make the information in paragraphs (2), (4), (6), and (7) of subdivision (a) available to the public.

(c) The bureau board shall also publish information regarding licensees on the Internet as specified in Section 27. The information shall include, but shall not be limited to, information regarding license status and the information specified under subdivision (b).

6535. The bureau board shall approve or deny licensure in a timely manner to applicants who apply for licensure. Upon approval of a license, the bureau board shall notify the applicant of issuance of the license, and shall issue a license certificate identifying him or her as a "licensed professional fiduciary."

6536. The bureau board shall review all applications for licensure and may investigate an applicant's qualifications for licensure. The bureau board shall approve those applications that meet the requirements for licensure, but shall not issue a license to any applicant who meets any of the following criteria:

(a) Does not meet the qualifications for licensure under this chapter.

(b) Has been convicted of a crime substantially related to the qualifications, functions, or duties of a professional fiduciary.

(c) Has engaged in fraud or deceit in applying for a license under this chapter.

(d) Has engaged in dishonesty, fraud, or gross negligence in performing the functions or duties of a professional fiduciary, including engaging in such conduct prior to January 1, 2009.

(e) Has been removed as a professional fiduciary by a court for breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference, or has demonstrated pattern of negligent conduct, including a removal prior to January 1, 2009, and all appeals have been taken, or the time to file an appeal has expired.

6537. The bureau board may deny a license for the reasons specified in Section 480 or 6536. An applicant notified of the denial of his or her application for licensure shall have the right to appeal to the bureau board as specified in Chapter 2 (commencing with Section 480) of Division 1.5.

6538. (a) To qualify for licensure, an applicant shall have completed 30 hours of prelicensing education courses provided by an educational program approved by the bureau board.

(b) To renew a license, a licensee shall complete 15 hours of approved continuing education courses each year.

(c) The cost of any educational course required by this chapter shall not be borne by any client served by a licensee.

6539. As a requirement for licensure, an applicant shall take and pass the

licensing examination administered by the ~~bureau~~ board. The ~~bureau~~ board shall determine the frequency with which the examination will be given. The ~~bureau~~ board shall also determine the frequency with which an applicant for reexamination may sit for the examination. The ~~bureau~~ board shall administer the examination through a computer-based examination process and may also administer the examination through other means.

6540. Individuals, entities, agencies, and associations that propose to offer educational programs qualifying for the prelicensing educational or continuing educational requirements of this chapter shall apply for and obtain the approval of the ~~bureau~~ board.

6541. (a) A license shall expire one year after it was issued on the last day of the month in which it was issued.

(b) A license may be renewed by filing a renewal application with the ~~bureau~~ board, submitting the annual statement required by Section 6561, submitting proof of the licensee's compliance with the continuing education requirements of this chapter, and payment of the renewal fee set by the ~~bureau~~ board, provided that the licensee has not engaged in conduct that would justify the ~~bureau's~~ board's refusal to grant the renewal. Acts justifying the ~~bureau's~~ board's refusal to renew a license shall include any of the following:

- (1) Conviction of a crime substantially related to the qualifications, functions, or duties of a fiduciary.
- (2) Fraud or deceit in obtaining a license under this chapter.
- (3) Dishonesty, fraud, or gross negligence in performing the functions or duties of a professional fiduciary.
- (4) Removal by a court as a fiduciary for breach of fiduciary duty if all appeals have been taken or the time to file an appeal has expired.

Article 4. Practice Provisions

6560. A licensee shall keep complete and accurate records of client accounts, and shall make those records available for audit by the ~~bureau~~ board.

6561. (a) A licensee shall initially, and annually thereafter, file with the ~~bureau~~ board a statement under penalty of perjury containing the following:

- (1) Her or his business address, telephone number, and facsimile number.
- (2) Whether or not he or she has been removed as a fiduciary by a court for breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference, or he or she has demonstrated a pattern of negligent conduct, including a removal prior to becoming licensed, and all appeals have been taken, or the time to file an appeal has expired. The licensee may file an additional statement of the issues and facts pertaining to the case.
- (3) The case names, court locations, and case numbers for all matters where the licensee has been appointed by the court.
- (4) Whether he or she has been found by a court to have breached a fiduciary

duty.

(5) Whether he or she has resigned or settled a matter in which a complaint has been filed, along with the case number and a statement of the issues and facts pertaining to the allegations.

(6) Any licenses or professional certificates held by the licensee.

(7) Any ownership or beneficial interests in any businesses or other enterprises held by the licensee or by a family member that receives or has received payments from a client of the licensee.

(8) Whether the licensee has filed for bankruptcy or held a controlling financial interest in a business that filed for bankruptcy in the last ten years.

(9) The name of any persons or entities that have an interest in the licensee's professional fiduciary business.

(10) Whether the licensee has been convicted of a crime.

(b) The statement by the licensee required by this section may be filed electronically with the ~~bureau~~ board, in a form approved by the ~~bureau~~ board. However, any additional statement filed under paragraph (2) of subdivision (a) shall be filed in writing.

6562. The annual statement shall be filed with the ~~bureau~~ board 60 days prior to the expiration of the license as provided in subdivision (a) of Section 6541.

Article 5. Enforcement and Disciplinary Proceedings

6580. (a) The ~~bureau~~ board may upon its own, and shall, upon the receipt of a complaint from any person, investigate the actions of any professional fiduciary. The ~~bureau~~ board shall review a professional fiduciary's alleged violation of statute, regulation, or the Professional Fiduciaries Code of Ethics and any other complaint referred to it by the public, a public agency, ~~or the department~~, and may impose sanctions upon a finding of a violation or a breach of fiduciary duty.

(b) Sanctions shall include any of the following:

(1) Administrative citations and fines as provided in Section 125.9 for a violation of this chapter, the Professional Fiduciaries Code of Ethics, or any regulation adopted under this chapter.

(2) License suspension, probation, or revocation.

(c) The ~~bureau~~ board shall provide on the Internet information regarding any sanctions imposed by the ~~bureau~~ board on licensees, including, but not limited to, information regarding citations, fines, suspensions, and revocations of licenses or other related enforcement action taken by the ~~bureau~~ board relative to the licensee.

6582. All proceedings against a licensee for any violation of this chapter or any regulations adopted by the ~~bureau~~ board shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and shall be prosecuted by the Attorney General's office, and the ~~bureau~~ board shall have all the powers granted therein.

6582.5. Notwithstanding Section 6582, if any violation occurs, in its discretion, the ~~bureau~~ board may refer the case to the Attorney General or to the local district attorney for criminal prosecution. The referral of a case for criminal prosecution shall not preclude the ~~bureau~~ board from taking any other action provided for in this chapter.

6583. The ~~bureau~~ board shall establish a system of administrative citations and fines under Section 125.9 for violations of this chapter, the Professional Fiduciaries Code of Ethics, or any regulation adopted under this chapter.

6584. A license issued under this chapter may be suspended, revoked, denied, or other disciplinary action may be imposed for one or more of the following causes:

(a) Conviction of any felony or any misdemeanor, if the misdemeanor is substantially related to the functions and duties of a professional fiduciary. The record of conviction, or a certified copy thereof, is conclusive evidence of the conviction.

(b) Failure to notify the ~~bureau~~ board of a conviction as required by paragraph (10) of subdivision (a) of Section 6561.

(c) Fraud or misrepresentation in obtaining a license.

(d) Fraud, dishonesty, corruption, willful violation of duty, gross negligence or incompetence in practice, or unprofessional conduct in, or related to, the practice of a professional fiduciary. For purposes of this section, unprofessional conduct includes, but is not limited to, acts contrary to professional standards concerning any provision of law substantially related to the duties of a professional fiduciary.

(e) Failure to comply with, or to pay a monetary sanction imposed by, a court for failure to provide timely reports. The record of the court order, or a certified copy thereof, is conclusive evidence that the sanction was imposed.

(f) Failure to pay a civil penalty relating to the licensee's professional fiduciary duties.

(g) The revocation of, suspension of, or other disciplinary action against, any other professional license by the State of California or by another state. A certified copy of the revocation, suspension, or disciplinary action is conclusive evidence of that action.

(h) Violation of this chapter or of the applicable provisions of Division 4 (commencing with Section 1400), Division 4.5 (commencing with Section 4000), Division 4.7 (commencing with Section 4600), or Division 5 (commencing with Section 5000) of the Probate Code or of any of the statutes, rules, or regulations pertaining to duties or functions of a professional fiduciary.

Article 6. Revenue

6590. All fees collected by the ~~bureau~~ board under this chapter shall be paid into the ~~Professional Fiduciary Fund~~ Accountancy Fund in the State Treasury, ~~which is hereby created~~. The money in the fund shall be available to the ~~bureau~~ board

~~for expenditure for the purposes of this chapter only upon appropriation to carry out the provisions of this chapter as appropriated by the Legislature.~~

~~6591. The Professional Fiduciary Fund shall be the successor fund to those funds deposited under the Statewide Registry with the Department of Justice pursuant to Chapter 13 (commencing with Section 2850) of Part 4 of Division 4 of the Probate Code.~~

6591. The Professional Fiduciary Fund Accountancy Fund shall be the successor fund to those funds deposited under the Statewide Registry with the Department of Justice pursuant to Chapter 13 (commencing with Section 2850) of Part 4 of Division 4 of the Probate Code into the Professional Fiduciaries Fund pursuant to former Section 6591 of Chapter 6 of Division 3 of the Business and Professions Code created in accordance with Chapter 491 of the Statutes of 2006.

6592. (a) The fee for a professional fiduciary examination and reexamination shall be set by the ~~bureau~~ board through regulation at the amount necessary to recover the actual costs to develop and administer the examination.

(b) The license fee to obtain a professional fiduciary license shall be set by the ~~bureau~~ board.

(c) The renewal fee for a professional fiduciary license shall be set by the ~~bureau~~ board.

(d) The license and renewal fees under subdivisions (b) and (c) shall be set by the ~~bureau~~ board through regulation at an amount necessary to recover the costs to the ~~bureau~~ board in carrying out the provisions of this chapter.

Memorandum

CBA Agenda Item VII.
February 24, 2011

To : CBA Members

Date : February 11, 2011

Telephone: (916) 561-1792

Facsimile : (916) 263-3675

E-mail : mstanley@cba.ca.gov

From : Matthew Stanley
Legislation/Regulation Analyst

Subject : Direction to Witnesses on Statements to be Made at Sunset Review Hearing

Testimony before the Legislature, in any form, is politically sensitive, and the views and agendas of all involved parties must be carefully considered when making statements to its committees.

While Department of Consumer Affairs' current formal position on the Professional Fiduciaries Bureau (PFB) is what is stated in the PFB Sunset Review Report, it is unknown what position the DCA will take if a merger with the California Board of Accountancy (CBA) is proposed. It is further unknown what the Legislature's position would be at this time; however, having a Democrat majority with a Democrat Governor, agreement and compromise will likely be easier than it has in the past. Finally, though the Governor's exact position is unknown, he has spoken of his desire to streamline, consolidate and make government more efficient. With this philosophy, and current budget situation, it is very possible, and maybe even probable, that Governor Brown would support this potential merger.

With all of this in mind, staff is asking that the CBA provide specific direction to its President, Sally Anderson, and Executive Officer, Patti Bowers regarding its thoughts on the possible merger of the CBA and the PFB in order that they be best prepared to testify at the March 21 Sunset Review hearings.

Memorandum

CBA Agenda Item VIII.
February 24, 2011

To : CBA Members

Date : February 11, 2011

Telephone : (916) 561-1716

Facsimile : (916) 263-3674

E-mail : vdaniel@cba.ca.gov



From : Veronica Daniel
Board Relations Analyst

Subject : NASBA's Request for Vice Chair Recommendations for 2011-12

The NASBA Nominating Committee is requesting recommendations from all state boards for Vice Chair of NASBA for the 2011-2012 year. The Vice Chair, in the absence of the Chair, shall exercise the duties of and possesses all the powers of the Chair. The Vice Chair also serves as a member of the Administration and Finance Committee. The list of eligible candidates is attached to NASBA's cover memorandum. Both documents are provided as **Attachment 1**.

Mr. Walter Davenport and Mr. Carlos Johnson have both requested the CBA's endorsement in support of their individual nominations. Copies of both Mr. Davenport's and Mr. Johnson's resumes are provided as **Attachment 2**. Included with each candidate's resume are endorsement letters already issued by other states.

If the CBA would like to submit a recommendation, staff may be directed to prepare a memo indicating such and delegate the final language approval to the CBA President prior to the recommendation being forwarded to NASBA.

If you have any specific questions about the nomination process, you may contact Anita Holt at NASBA at (615) 880-4202 or via email at aholt@nsaba.org.

Attachments

From: [Billy M. Atkinson](#)
To: vdaniel@cba.ca.gov
Subject: Vice Chair Recommendations needed for 2011-12
Date: Friday, January 21, 2011 7:08:56 AM

Share This: 



Request for Vice Chair Recommendations

The NASBA Nominating Committee is now calling for your Board's recommendation(s) for Vice Chair of NASBA for the 2011-12 year. As you well know, this is your process and we hope your board will carefully consider either nominating or endorsing a candidate whom you believe will represent your interests, issues and approach. We would be pleased if your board would discuss possible candidates and recommend one or more persons for consideration by the Nominating Committee.

Under Article IV, Section 3 of NASBA's Bylaws, to be eligible to serve as Vice Chair, an individual must have served as a Director-at-Large or Regional Director for a minimum of one year, but need not be a current member of the Board of Directors at the time of his or her election. No Past Chair is eligible for re-election. For further review of the 2010 amended bylaws, please [click here](#).

Please mail your Board's recommendation(s) along with a bio or resume to Billy Atkinson, Past Chair at NASBA, 150 4th Avenue North, Suite 1300, Nashville, TN 37219-2417. You may also fax such recommendation(s) to 615-880-4291 or email to aholt@nasba.org. Our Nominating Committee meets on March 28th and we would appreciate receiving your nominations with sufficient time to compile information for the committee. Thus submission by early to mid March would be best, however please let Anita Holt or me know if you will be submitting your information near the March 28 date. Should you have any questions, please call Anita Holt at 615-880-4202 or you may reach me at bill.atkinson@us.pwc.com or my personal email batkinson72@gmail.com as I near retirement in June.

Please [click here](#) to access an attachment of Individuals Eligible for Vice Chair to help you with the recommendation process.

Thank you for your interest and participation.



This message brought to you by National Association of State Boards of Accountancy (NASBA)
150 Fourth Avenue North, Suite 700, Nashville, TN, 37219
www.nasba.org

This email was sent to vdaniel@cba.ca.gov. To ensure that you continue receiving our emails, please add us to your address book or safe list.

Exhibit A

NASBA Individuals Eligible for Vice Chair Position (Analysis of Board of Directors From 1995 to 2010/11)

Sheila Birch (OH) Great Lakes Regional Director 1 year, Director at Large 2 years
Donald Burkett (SC) Middle Atlantic Regional Director, 3 years, Director at Large 1 year
Gerald Burns (OR) Pacific Regional Directors 3 years, Director at Large 6 years
Charlie Calhoun (FL) Director at Large 2 years
Jefferson Chickering (NH) Northeast Regional Director 1 year
Jacob J. Cohen (MD) Middle Atlantic Regional Director 3 years
Walter C. Davenport (NC) Middle Atlantic Regional Director 1 year, Director at Large 6 years
Ellis Dunkum (VA) Middle Atlantic Regional Director 3 years, Director at Large 3 years
Andrew L. DuBoff (NJ) Director at Large 6 years
David D. Duree (TX) Southwest Regional Director 1 year
Gary Fish (IL) Great Lakes Regional Director 2 years
Sally Flowers (CA) Pacific Regional Director 3 years, Director at Large 1 year
Robert Fox (NY) Northeast Regional Director 3 years
Bruce Gamett (NV) Mountain Regional Director 2 years
Phil Gleason (MN) Central Regional Director 3 years
Miley (Bucky) Glover (NC) Middle Atlantic Regional Director 1 year
James W. Goad (AR) Southwest Regional Director 2 years
Janice L. Gray (OK) Southwest Regional Director 1 year
Gaylen R. Hansen (CO) Mountain Regional Director 2 years, Director at Large 3 years
Princy Harrison (MS) Southeast Regional Director 3 years
Harold Hein (CO) Director at Large 3 years
Claireen Herting (IL) Great Lakes Regional Director 3 years
Asa Hord (KY) Southeast Regional Director 1 year, Director at Large 3 years
Donald Howard (MD) Director at Large 2 years
Richard Isserman (NY) Northeast Regional Director 3 years, Director at large 3 year
Carlos Johnson (OK) Southwest Regional Director 3 years, Director at Large 1 year
Don Johnson (NY) Northeast Regional Director 2 years
John Katzenmeyer (OH) Great Lakes Regional Director 2 years, Director at Large 6 years
Joe Lawrence (AL) Southeast Regional Director 1 year, Director at Large 3 years
Telford A. Lodden (IA) Central Regional Director, 2 years
Ted Long (OH) Great Lakes Regional Director 3 years, Director at Large 3 years
Jimmie Lee Mason (TX) Director at Large 5 years
Patrick O'Reilly (OH) Great Lakes Regional Director 1 year

Kenneth Odom (AL) Southeast Regional Director 3 years
Harry Parsons (NV) Mountain Regional Director, 3 years, Director at Large 1 year
Robert A. Pearson (MO) Central Regional Director 3 years, Director at Large 3 years
John Peck (IL) Great Lakes Regional Director 2 years
Selwin Price (IL) Great Lakes Regional Director 1 year
Will Pugh (TN) Southeast Regional Director 2 years, Director at Large 3 years
Donald R. Roland (GA) Southeast Regional Director 2 years
Harold Russell (OK) Southwest Regional Director 1 year
Leonard Sanchez (NM) Southwest Regional Director 3 years, Director at Large 3 years
Paul Seitz (DE) Mid Atlantic Regional Director 1 year
Robert Shackleton (CA) Pacific Regional Director 1 year
Michael Skinner (GA) Southeast Regional Director 3 years
Kathleen Smith (NE) Central Regional Director 2 year, Director at Large 8 years
E. Kent Smoll (KS) Central Regional Director, 3 years, Director at Large 1 year
Beryl Stover (MT) Mountain Regional Director 1 year
Laurie J. Tish (WA) Pacific Regional Director 3 year
Kim Tredinnick (WI) Great Lakes Regional Director 1 year
Karen F. Turner (CO) Mountain Regional Director, 1 year
George Veily (CT) Northeast Regional Director 3 years, Director at Large 1 year
Michael Weinshel (CT) Northeast Regional Director, 3 years
Harris Widmer (ND) Regional Director 3 years, Director at Large 6 years
Janice Wilson (CA) Director at Large 1 year
Sandra R. Wilson (AK) Pacific Regional Director, 3 years

VITA
Walter Conaway Davenport

VITA

Walter Conaway Davenport, CPA

Family: Divorced
Sons – Walter Conaway Davenport, Jr. – 34 years old
Winston Christopher Davenport – 29 years old

Education:
1970 Morehouse College, Atlanta, GA
(BA – cum laude – in Business Administration)

Present Occupation:
(2008 – Present) Walter C. Davenport, CPA
Raleigh, NC
Consultant / Corporate Director

Past Occupations:
(1998 - 2008) Partner (retired 2008)
Cherry, Bekaert & Holland, L.L.P.
Certified Public Accountants and Consultants
Raleigh, NC
(Firm-wide Director of Not-For-Profit Industry Group with annual revenues of
\$12 - \$15 million)
(1988 – 1997) President/CEO/Director/Shareholder
Garrett & Davenport, P.C.
Certified Public Accountants
Raleigh, NC
(Largest and oldest minority-owned CPA firm in North Carolina. Merged into
Cherry Bekaert & Holland, L.L.P. effective January 1, 1998)
(1986 – 1988) President and Senior Vice President/Director/Shareholder
Garrett, Sullivan, Davenport, Bowie & Grant
Certified Public Accountants, P.A.
Director-In-Charge, Raleigh, NC

(1975 – 1986) Senior Vice President/Director/Shareholder
Garrett, Sullivan & Company
Certified Public Accountants, P.A.
Director-In-Charge, Raleigh, NC

(1974 – 1975) Nathan T. Garrett
Certified Public Accountant
Durham, NC

(1970 – 1974) Arthur Andersen and Company
Certified Public Accountants
Atlanta, GA

Professional, Civic and Social Organizations:

Professional:

- American Institute of Certified Public Accountants (AICPA)
- North Carolina Association of Certified Public Accountants (NCACPA)
- Triangle Chapter of the North Carolina Association of CPAs
- AICPA – Minority Recruitment and Equal Opportunity Committee (Past)
- NCACPA – Minority Issues Committee (past)
- National Association of Black Accountants (NABA)
- National Association of State Boards of Accountancy (NASBA)
- AICPA – Board of Examiners (1999 – 2003) (2004 -- 2005)
- National Association of Corporate Directors (NACD)

Professional Licensing Board:

(1994 – 2003) - North Carolina State Board of Certified Public Accountant Examiners
President (1995 – 1997) (1998 – 1999)
Vice President (1997 – 1998)
Secretary/Treasurer (2002 – 2003)

Civic/ Boards / Committees
(Past)

- Board of Visitors, St. Augustine's College
- Board of Directors, Raleigh Little Theatre
- Sanderson High School Board Advisory Council (Wake County Board of Education)
- Board of Directors, Wake County Education Foundation (Treasurer)
- Raleigh Convention and Civic Center Task Force
- Wake County Blue Ribbon Revenue Committee
- Board of Directors, Downtown Raleigh Development Corporation
- City of Raleigh Housing Advisory Group
- Board of Directors, Raleigh Chamber of Commerce
- Board of Directors, United Way of Wake County (Treasurer)
- Southeast Raleigh Improvement Commission
- Board of Directors – Shepard's Table Soup Kitchen

(Past – continued)

- Indigent and Uninsured Commission (Wake County)
- Board of Directors – Easter Seal Society of NC (Chairman)
- Rotary Club of Raleigh
- Finance Committee – Triangle United Way
- Board of Directors – The Hospital Alliance for Community Health
- Board of Trustees – Elizabeth City State University (Board Chairman)
- Board of Trustees -- Duke Raleigh Hospital
- Advisory Council – NC State University -- College of Management –
Department of Accounting

Civic / Boards
(Present)

- Raleigh City – Advisory Board – BB&T
- Board of Governors -- The University of North Carolina system
- Board of Directors –United Way of the Greater Triangle
- Board of Trustees – Blue Cross Blue Shield of North Carolina
- Board of Directors – National Association of State Boards of Accountancy
- Board of Directors – IntraHealth International, Inc
- Board of Directors – N.C. Center for Nonprofits
- Duke University Health System – Patient Advisory Council

Social:

- Alpha Phi Alpha Fraternity
- Sigma Pi Phi Fraternity
- National Association of Guardsmen – North Carolina Chapter

Honors and Awards

- | | |
|--------|---|
| (1978) | Sigma Gamma Rho Sorority
Awards and Achievements Hall of Fame Recipient
Category – Pioneer Fields |
| (1979) | Outstanding Young Man of America |
| (1998) | North Carolina Hospital Association
Trustee Service Award |

Other Information

- Certificate of Director Education (National Association of Corporate Directors)
- One of three (3) incorporators of Garrett, Sullivan & Company, CPAs, P.A.
- One of five (5) incorporators of Garrett, Sullivan, Davenport, Bowie & Grant
CPAs, P.A.

- Licensed CPA in North Carolina
- Member of First Baptist Church
 - Church Treasurer (Past)
 - Board of Trustees (Vice Chair)
- Current Political Campaign Treasurer For:
 - (1984 –) Citizens for Dan Blue, N.C. House of Representatives / Senate
 - (1999 –) Citizens to Elect James West (City Council District C)
(Wake County Commissioner)
 - (2002) Dan Blue Senate Committee (U.S. Senate)
 - (2004 –) Jack Nichols for N.C. Senate
 - (2009 –) Committee to Elect Harold H. Webb County Commissioner
 - (2010 --) Nichols for County Commissioner (Wake County)
- Past Political Campaign Treasurer for 20 local, state and national campaigns

Walter Davenport's Involvement in NASBA

- Regular attendee at Regional and Annual meetings since 1994
- Member of Meeting and Events Committee (1995 – 1996)
- Member of Licensing Requirement Committee (1996 – 1997)
- Member of Examinations Committee (1997 – 1998)
- Member of Administration and Finance Committee (1997 – 2002) (2006 – 2008)
(Chairman 2006 – 2008)
- Member of Nominating Committee (2000 – 2002)
- Member of Strategic Initiatives Committee (2002 – 2004)
(Chairman 2003 – 2004)
- Member of Compliance Assurance Committee (2004 – 2005)
- Member of CPE Advisory Committee (2004 – 2006)
(Chairman 2004 – 2006)
- * Member of Audit Committee (2008 -- 2009)
(Chairman 2008 --- 2009)
- * Member of CPA Licensing Examinations Committee (CLEC) (2009 -- 2010)
(Chairman 2009 -- 2010)
- Member of CPA Examination & Administration Committee (2010--)
(Co-Chairman 2010 --)
- NASBA Regional Director – Middle Atlantic (2003 – 2004)
- NASBA Board of Directors (2003 – Present)
(Serving unexpired term of Diane Rubin (2004 – 2006)
(First full term 2006 – 2009)
(Second full term 2009 -)



Governor Brian Schweitzer

Montana

Department of Labor and Industry

Business Standards Division

Board of Public Accountants

January 31, 2011

Billy Atkinson
Past Chair at NASBA
150 4th Avenue North, Suite 1300
Nashville, TN 37219-2417

Dear Mr. Atkinson:

The Montana Board of Public Accountants wishes to recommend Walter C. Davenport, CPA, for Vice Chair of NASBA for the 2011-2012 year.

Members of our Board have had the fortune of interacting with Mr. Davenport on various NASBA projects over the years, and have always found him to be very open to all ideas and opinions; firm in his convictions, yet fair in judgment; all attributes needed by NASBA in its leadership positions.

We are confident in Mr. Davenport's vast knowledge of the profession's pressing issues, and his ability to lead the diverse members of the various state boards in dealing with those issues. Mr. Davenport has a wealth of experience working with NASBA. He has been and/or currently is a member of the Meeting and Events Committee, the Licensing Requirement Committee, the Examinations Committee, the Administration and Finance Committee, the Nominating Committee, the Strategic Initiatives Committee, the Compliance Assurance Committee, the CPE Advisory Committee, the Audit Committee, the CPA Licensing Examinations Committee and the CPA Examination and Administration Committee. Mr. Davenport has also been a NASBA Regional Director (for the Middle Atlantic Region) and has served on the NASBA Board of Directors since 2003.

The members of the Montana Board of Public Accountants are pleased to support Walter C. Davenport, CPA, for Vice Chair of NASBA.

Sincerely,

A handwritten signature in cursive script, reading "Rick Reisig".

Rick Reisig, CPA
Chairman, Montana Board of Public Accountants

cc: State Boards of Accountancy
Walter C. Davenport, CPA

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"AN EQUAL OPPORTUNITY EMPLOYER"

Carlos E. Johnson, Ed.D., CPA

SUMMARY

Dr. Johnson serves(d) the public of the State of Oklahoma and the profession of Accountancy as a board member (5 years) of the National Association of Boards of Accountancy (NASBA), immediate past member of the Oklahoma Board of Accountancy ("OAB") (two terms of 5 years each and chairman for 3 years), current chairman of the legislative committee (20 plus years) and the Federal Key Person Coordinator (FKPC) (30 plus years) of the Oklahoma Society of Certified Public Accountants (OSCPA), an immediate past member of the AICPA Council for six years, as Chairman of the Oklahoma Internet Application Review Board (10 plus years) and a member of the Oklahoma Building Bonds Commission.

As a member of the board of NASBA, with Michael Weatherwax, lead the implementation effort of Substantial Equivalency by meeting with various state boards and attorneys general to discuss the need of the profession for Substantial Equivalency and the changes necessary in state statutes. As chairman of the Audit Committee, initiated the development of an audit committee charter, lead the committee in the adoption of the best practices for audit committees of not for profit organizations and a review of the qualifications of the external auditing firm. As chairman of the State Board Relevance and Effectiveness Committee in cooperation with its members, led the effort to develop a Rational document document re why boards of accountancy should be self directed and semi-independent (SD-SI). Also, led the development of a template for the modification of a state statute and the development of a budgetary template to assist state boards with a convenient tool to create "what if" budgets to support a SD-SI board. With Rick Sweeney and Ron Rotaru and members of the Legislative Support Committee developed and populated a web site to provide documents, articles, testimony etc. to provide Boards with immediate resources to respond to various inquiries.

Dr. Johnson has held all of the leadership positions of the OAB and is the immediate past chairman (three years). Subsequent to taking his position as a member of the OAB, Dr. Johnson lead the OAB transformation to the world of technology through the development of an online registration system for firms and individuals, licensee search system and implementation of a modernized web site for use by the public. He also lead the development of the uniform enforcement system. As noted on the following pages, Dr. Johnson has served five governors and leaders of the Oklahoma state legislature on reform and re-engineering task forces and committees.

Dr. Johnson has held all of the leadership positions of the OSCP and is a member of its Hall of Fame. Soon after becoming a member of the OSCP, Dr. Johnson through his leadership as chairman of the OSCP CPE committee created the infrastructure to involve the Oklahoma Academic Community in the activities of the OSCP. In addition, the curriculum offerings available to members were increased to provide a diversity of offerings to all segments of the membership (industry, financial services and management consulting). As chairman of the OSCP Legislative Committee (LC), he worked with five governors and the leadership of the respective legislative sessions to appoint a member of the OSCP to membership on each major state board and commission to bring increased accountability and transparency to Oklahoma state government. Also, as chairman of the LC was the stimulus for the OSCP to form a PAC to support legislators who would promote economic development and create an enlightened

regulatory environment for all licensed professionals. In addition, he led the development of an annual monograph of federal and state tax statutes, rules and regulations for congressional and Oklahoma legislative members. As the FKPC, lead the OSCPA initiative for members to develop relationship with members of the congressional delegation and developed the original grass roots legislative system. The system has been the engine for creating a positive awareness of OSCPA membership by congressional and Oklahoma legislative members.

Dr. Johnson served as Chairman of the Uniform Accounting Act Committee of the AICPA (five years) and was a member for a prior three term, was a Member of the original AICPA 150 Hour Committee, the original committee to promote the concept of Substantial Equivalency and the original Leadership Committee of 100. He made many presentations to various professional groups supporting the 150 Hour educational requirement to enter the profession and the concept of Substantial Equivalency and why each is in the best interest of the public. Working with the staff of the AICPA developed the workbook "Implementation of the 150 Hour Requirement". Also, he served as a member of the Awards Committee for three years. He has instructed training seminars for various professional associations at both the national and state levels for a multipal years.

Dr. Johnson has more than 40 years of experience specializing in the practice of financial institutions, higher education, government, not-for-profit and retail accounting. He was the partner-in-charge of the KPMG Southwest Higher Education, and Oklahoma Not for Profit and Government practices. In addition, Dr. Johnson was a partner with the firm of Lisle, Compton, Cole and Almen in Oklahoma City, which merged into the firm of BKD, and Horne & Company of Ada, Oklahoma. In summary, Dr. Johnson earned partnership responsibilities in two well known local firms in Oklahoma and is a retired partner of KPMG.

Dr. Johnson is currently of counsel to Eide Bailly CPAs, LLP and is self employed as a management consultant.

PROFESSIONAL EXPERIENCE

2011 - present Of counsel to Eide Bailly CPAs, LLP

2010 – present Management Consultant, self employed

2001 – 2010 Senior Investment Banker, BOSC, Inc.

2001 – 2006 Partner, Lisle Compton Cole & Almen LLP (firm merged with BKD)

2001 – 2002 Visiting Professor, School of Accounting, University of Oklahoma

1977 – 2001 Partner, KPMG LLP, Certified Public Accountants (Retired)

1973 – 1977 Partner, Horne & Co., Certified Public Accountants, Ada, Oklahoma

1966 – 1973 Chairman, Department of Business Administration, East Central University

1964 – 1966 Accountant, Controller's staff, Oklahoma State University

EDUCATION AND TRAINING

High School Diploma - 1959

Wilson High School, Wilson, Oklahoma

Bachelor of Science degree - 1964

East Central State University, Ada, Oklahoma

Master of Science degree and Doctorate (Ed.D.) – 1966/1977

Oklahoma State University, Stillwater, Oklahoma

ACADEMIC HONORS

Beta Gamma Sigma (College of Business academic honor)

Alpha Chi (Small College academic honor)

2003 Distinguished Accounting Alumnus: Oklahoma State University School of Accounting

Chi Chapter of Beta Alpha Psi

PROFESSIONAL AFFILIATIONS

National Association of State Boards of Accountancy

- Member of the Board, at large member (2009-2012)
- Chairman, Uniform Accountancy Act Committee (2010-2011)
- Member of the Board as Southwest Regional Director (2006-2009)
- Chairman, Board Relevance Committee (2009-2010)
- Chairman, State Legislative Support Committee (2007-2009)

- Chairman, Special Task Force – Implementation of Substantial Equivalency
- Member, Regulatory Structures Committee
- Chairman, Audit Committee and member for six years

Oklahoma Society of Certified Public Accountants

- Current:
 - Congressional Key Person Coordinator, 1990-present
 - Chairman, Governmental Relations Committee, 1985-present
- Previous:
 - President
 - Chairman, Continuing Professional Education Committee
 - Accounting Hall of Fame

American Institute of Certified Public Accountants

Current

- Member, Awards Committee, 2005-2008
- Chairman, Uniform Accountancy Act Committee (five years)
- Chairman, State Legislative Committee, 1997 – 1999
- Charter Member, Committee of One Hundred (advisory committee to the AICPA Chairman and President)
- Member, Area IV Legislative Committee
- Member, Committee on State Regulation
- Member, National Steering Committee, Uniformity of Regulation
- Member, State Legislative Committee, 1993 - 1996
- Member, Uniform Accountancy Act Committee (six years)
- Charter Member, 150 hour Committee

STATE OF OKLAHOMA ACTIVITIES

- Chairman, Governmental Technology Review Board, formerly Oklahoma Internet Application Review Board (2000-Present)
- Member, Building Bonds Commission
- Member and Past Chairman, Oklahoma Board of Accountancy
- Member, Governor's Reform Commission for Governor Mary Fallin, 2011

- Member, Governor's Commission on Government Performance for Governor Keating
- Vice-Chairman, Oversight Committee to Review State Treasurer's Office for Governor Bellmon
- Member, Committee on Fiscal Reform for Governor Bellmon
- Member, Committee on Governmental Reform for Governor Nigh
- Member, Committee for Restructuring Executive Branch for Governor Nigh
- Member, Committee for Restructuring Oklahoma Tax Commission for Speaker Barker

COMMUNITY AND CIVIC AFFILIATIONS

- Current:
 - Director, Oklahoma Zoological Society, Executive Committee and Life Director (2000-present)
 - Center for Not for Profits- Board Development Committee and Audit Committee
 - Member, Oklahoma State Chamber of Commerce Board of Directors, 1998 – present, and various committees
 - Chairman, Oklahoma State University, School of Accounting Advisory Board (2008-2010)
 - Member of Board of Governors, Oklahoma State University Foundation
 - Member, Audit Committee of CASA
 - Economic Club of Oklahoma, Secretary and Member of the Board
- Previous:
 - Treasurer and/or Director , Oklahoma Zoological Society, 15 years
 - Trustee, Finance Committee, Oklahoma City Zoological Trust
 - Trustee, Oklahoma City Zoological Trust
 - Treasurer, Oklahoma State Chamber of Commerce Board of Directors, 2003
 - President, East Central University Foundation, 1990/91 & 2006/07
 - President, The Economic Club of Oklahoma and member of the board 2002-2007
 - Member, Leadership Oklahoma Class IX
 - Director and President, Higher Education Alumni Council, 1985-1986 and 2001-2005
 - Member, Oklahoma City Philharmonic Board of Trustees
 - Member, Omniplex Board of Directors
 - Member, The Men's Dinner Club Executive Committee
 - Boy Scouts of America/Last Frontier Council (various committees)
 - President, East Central University Alumni Association
 - President, Community Chest, Ada
 - Director, Chamber of Commerce, Ada
 - President, Delta Pi Epsilon, Oklahoma State University Chapter

OTHER EXPERIENCES

- Distinguished Professional, School of Accounting, Oklahoma State University
- Distinguished Lecturer for the Year 2003, Don W. Sands Endowed Lecturer - Southeastern Oklahoma State University School of Business
- Distinguished Graduate - East Central State University, Ada, Oklahoma
- Scouting:
 - Eagle Scout (1955) – Troop 122, Midland, TX
 - Explorer Post Advisor – First Methodist Church of Ada, Oklahoma
 - High Adventure Experiences
 - Philmont Scout Ranch
 - Charles Sommers Canoe Base (2 trips)
 - Alaska, 31 days by Church Bus



Texas State Board of Public Accountancy

333 Guadalupe, Tower 3 Suite 900, Austin, Texas 78701-3900

William Treacy, Executive Director

January 24, 2011

Billy M. Atkinson, Chair
NASBA Nominating Committee
150 Fourth Ave. North, Suite 700
Nashville, TN 37219-2417

RE: Nomination of Carlos Johnson
as NASBA Vice Chair

Dear Mr. Atkinson:

The Texas State Board of Public Accountancy takes great pleasure in endorsing the candidacy of Carlos Johnson, EdD, CPA, of Oklahoma for NASBA Vice Chair. For more than 40 years Dr. Johnson has practiced accountancy in a number of different settings—financial institutions, higher education, government, retail, and not-for-profit associations—and served the profession tirelessly.

A graduate of Oklahoma State University, from which he holds a master's and a doctorate, Dr. Johnson is currently of counsel to Eide Bailly CPAs, LLP, and is self-employed as a management consultant. In 2001, he retired after 24 years from KPMG, where he had served as partner-in-charge of the Southwest Higher Education and Oklahoma Not for Profit and Government Practices. During his long career, Dr. Johnson was a partner in two prominent Oklahoma firms: Lisle, Compton, Cole & Almen, Oklahoma City, which merged into the firm of BKD, and Horne & Company, Ada. He had also been a senior investment banker with BOSC Inc., taught accounting at the University of Oklahoma, and conducted training seminars for AICPA and other professional associations.

Dr. Johnson has brought a wealth of expertise and insight to his NASBA positions: Southwest Regional Director and Board Member-at-Large; chair of the Legislative Support Committee, Audit Committee, and Mobility Task Force; and member of the Regulatory Structures Committee. He chaired AICPA's Uniform Accounting Act Committee and was a member of AICPA's original 150 Hour Committee and Leadership Committee of 100. In his home state, he has chaired the Oklahoma Internet Application Review Board and served in every leadership position on the Oklahoma Board of Accountancy and many in the Oklahoma Society of CPAs. In addition, Dr. Johnson has held several gubernatorial appointments to task forces, commissions, and committees and worked in countless community and civic endeavors.

The Texas Board wholeheartedly endorses Carlos Johnson as NASBA Vice Chair.

Yours very truly,

TEXAS STATE BOARD OF
PUBLIC ACCOUNTANCY

GREGORY L. BAILES
Chair

TEXAS STATE BOARD OF
PUBLIC ACCOUNTANCY

WILLIAM TREACY
Executive Director

cc: Carlos E. Johnson, EdD, CPA

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CPE
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(512) 305-7854

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BOARDS AND COMMISSIONS DIVISION

New Mexico Public Accountancy Board

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(505) 222-9850 ▪ Fax (505) 222-9855 ▪ www.rld.state.nm.us/accountancy

February 8, 2011

Billy Atkinson, CPA
Past Chair
NASA
150 Fourth Avenue North, Suite 700
Nashville, TN 37219

RE: Nomination of Carlos Johnson, Ed.D., CPA, for NASBA Vice Chair
for 2011-2012

Dear Mr. Atkinson and Members of the Nominating Committee:

The New Mexico Public Accountancy Board wishes to express its support of Carlos Johnson, Ed.D, CPA, for the position of NASBA Vice Chair for 2011-2012.

Dr. Johnson has a distinguished career in the field of public accountancy, holding leadership positions on the Oklahoma Board of Accountancy as well as within NASBA and in the American Institute of Certified Public Accountants. He currently serves NASBA as a Director-at-Large and as the Chairman of the Uniform Accountancy Act Committee. He is the Past Chairman of the State Board Relevance and Effectiveness Committee, the Past Chairman of the Legislative Support Committee, the Past Chairman of the Special Task Force to Implement Substantial Equivalency, and the Past Chairman of the Audit Committee. He has also served as a member of the Regulatory Structures Committee and as the Southwest Regional Director. Dr. Johnson has demonstrated strong leadership and integrity in these positions, and he draws on more than 40 years of experience in specialized areas of accounting as well as 20 years of experience in leading the Legislative Committee of the Oklahoma Society of Certified Public Accountants.

The New Mexico Public Accountancy Board supports the nomination of Dr. Johnson for the position of NASBA Vice Chair and recommends him for this office without reservation.

Sincerely, on behalf of the Board,

Patricia Soukup
Executive Director
New Mexico Public Accountancy Board

:ps

cc: Dr. Carlos Johnson
State Boards of Accountancy



STATE OF TENNESSEE
TENNESSEE STATE BOARD OF ACCOUNTANCY
DEPARTMENT OF COMMERCE AND INSURANCE
500 JAMES ROBERTSON PARKWAY
DAVY CROCKETT TOWER
NASHVILLE, TENNESSEE 37243
615-741-2550

January 28, 2011

Billy M. Atkinson, Chair
NASBA Nominating Committee
150 Fourth Ave. North, Suite 700
Nashville TN 37219-2417

Dear Mr. Atkinson,

The Tennessee State Board of Accountancy today voted unanimously to endorse Carlos Johnson, Ed.D., CPA for NASBA Vice Chair. Dr. Johnson's background of accountancy endeavors covering financial institutions, education, retail, not-for-profit and government arenas makes it possible for him to understand the broad spectrum of practitioners.

At the national level, he has worked with AICPA and his work with NASBA as Regional Director, Board Member-as-Large, Audit Committee, Mobility Task Force, member of the Regulatory Structures Committee and chair of the legislative committee place him in a unique position to provide leadership and regulatory guidance. In his home state of Oklahoma he has served on gubernatorial appointments to task forces, commissions and committees and participated in community and civic enterprises.

The Tennessee State Board of Accountancy is pleased to have the opportunity to endorse Carlos Johnson as NASBA Vice Chair.

Sincerely,

Mark H. Crocker, CPA
Executive Director



**STATE BOARD OF
CERTIFIED PUBLIC ACCOUNTANTS
OF LOUISIANA**

601 Poydras Street, Suite 1770
New Orleans, LA 70130

Phone: (504) 566-1244
Fax: (504) 566-1252
www.cpaboard.state.la.us

February 9, 2011

Billy M. Atkinson, CPA, Chair
NASBA Nominating Committee
150 Fourth Ave. N., Suite 700
Nashville, TN 37219-2417

RE: Vice Chair nomination

Dear Billy:

The Louisiana Board is pleased to add its endorsement and support of Carlos Johnson for the office of Vice Chair. A number of state boards have recently issued letters of support describing Dr. Johnson's broad experience and accomplishments that clearly show that he is well qualified to serve the member boards.

The Louisiana Board has direct experience with Carlos' wide range of abilities, in meetings with our Board members when he served as our Regional Director, and more recently in his role as Chair of the successful State Board Relevance and Effectiveness Committee. Carlos steered this Committee in its initial year in developing very comprehensive position papers on the rationale and benefits of "semi-independent" status that justify the need for boards' financial and operational independence. This work will be of great value to our member boards for many years to come.

Carlos is always well-prepared and very thorough on matters of interest to state boards, and he strikes the right balance of leadership by having vision and confidence, by listening to all concerns, by knowing how to develop consensus on mutual objectives, and then encouraging and monitoring progress.

We believe Carlos Johnson's sound judgment and proven record will be of great benefit to NASBA.

Very truly yours,



Michael A. Henderson, CPA
Executive Director

c: Boards of Accountancy



**STATE BOARD OF
CERTIFIED PUBLIC ACCOUNTANTS
OF LOUISIANA**

601 Poydras Street, Suite 1770
New Orleans, LA 70130

Phone: (504) 566-1244
Fax: (504) 566-1252
www.cpaboard.state.la.us

February 9, 2011

Billy M. Atkinson, CPA, Chair
NASBA Nominating Committee
150 Fourth Ave. N., Suite 700
Nashville, TN 37219-2417

RE: Vice Chair nomination

Dear Billy:

The Louisiana Board is pleased to add its endorsement and support of Carlos Johnson for the office of Vice Chair. A number of state boards have recently issued letters of support describing Dr. Johnson's broad experience and accomplishments that clearly show that he is well qualified to serve the member boards.

The Louisiana Board has direct experience with Carlos' wide range of abilities, in meetings with our Board members when he served as our Regional Director, and more recently in his role as Chair of the successful State Board Relevance and Effectiveness Committee. Carlos steered this Committee in its initial year in developing very comprehensive position papers on the rationale and benefits of "semi-independent" status that justify the need for boards' financial and operational independence. This work will be of great value to our member boards for many years to come.

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We believe Carlos Johnson's sound judgment and proven record will be of great benefit to NASBA.

Very truly yours,



Michael A. Henderson, CPA
Executive Director

c: Boards of Accountancy